



PUBLIC COMMENT SESSION SIGN IN SHEET

OCONEE COUNTY COUNCIL MEETING

Thursday, April 13, 2010

6:00 PM

Oconee County Administrative Offices
415 South Pine Street, Walhalla, SC

Limited to forty [40] minutes, four [4] minutes per person.
**Comments MUST be related to a specific agenda item
slated for action at the meeting.**

**If time permits the Council Chairman may allow citizens who have not signed up
to speak to address Council regarding non agenda items.**

PLEASE PRINT

	FULL NAME	AGENDA ITEM FOR DISCUSSION
1	x BO HORNE	HIGH POINTE/POINT WEST
2	x LARRY LINSIN	HIGH POINTE/POINT WEST
3	x GENE SENNING <i>passed</i>	N. FAIRVIEW REZONING
4	x DAVID McMANAN <i>passed</i>	N. FAIRVIEW REZONING
5		
6		
7	x <i>Boro Richards</i>	<i>Item 11 - 3-4-5</i>
8	x <i>Susie Cornelius</i>	<i>(5) Seneca Request</i>
9	<i>Boo Tva</i>	
10		
11		
12		
13		
14	<i>[Signature]</i>	
15	<i>[Signature]</i>	

Public Comments by Bo Horne to Oconee County Council – 4/13/2010

We've spoken to hundreds regarding the HighPointe controversy. So far, we've not found an average person who supports it.

You've ignored overwhelming public opposition, so let's discuss new information demanding your attention. We're providing numerous **public** documents for the record. I want to thank five others who spent weeks finding them.

Insider Influence is Prevalent:

Page 1 Beth (contract): Mr. Workman sat on the Board of TriCounty Tech when he was awarded a lucrative contract for student housing. This huge, non-competitive contract was not even reviewed by the TriCounty Board.

Page 2 (bank board): Mr. Workman sits on the Board of Community South Bank in Easley.

Page 3 (SEC): It is undercapitalized and on the verge of failure. It holds mortgages on HighPointe-PointeWest.

Page 4 (FDIC): It has entered into consent decrees, precursors for closure, with the SEC and FDIC.

The Risk is Far Higher than You Think:

Page 5 and 6 (mortgages): Multiple banks hold numerous mortgages on HPPW. BBT is in **very** deeply.

Page 7 (NW loan): On 12/31/09, Mr. Workman mortgaged personal assets to secure loans for the project.

A local banker tells me these are troubling signs when bankers make loans. No wonder BBT won't lend more, and demands 200% collateral.

Page 8 Beth (brown): A document filed on March 2 shows taxpayers could ultimately become responsible for brownfields cleanup costs.

The numerous complex, interlocking, and ever changing documents show the Council must review them **all carefully**. You **must** insure we understand **every** liability before signing **anything**.

You are not telling the public about costs:

Page 9 Beth (Strom): You justify this project as increasing future tax revenues, but avoid any mention of related costs. **Numerous** studies, including one by our Strom Thurmond Institute, show residential projects of **every** type, **never** generate sufficient taxes to cover all costs of required services.

Secret Meeting, Conflicts of Interest, and Do Overs have occurred:

On 3/16, one Councilman recused himself over possible conflicts of interest. You held a non-agenda "do over" for the tainted ordinances.

On 1/26, a special meeting was held for an Executive Session to receive legal advice for an ongoing matter. There was no notice you were launching a \$5.5M project. No public input was allowed. After one minute was used to start the executive session, you discussed it in secret for 47 minutes, then took one minute to say no action was taken, hold no discussion, and vote to start the gifting process. This meeting came perilously close to being illegal.

The conflict present on 3/16 was also present on 1/26. When will you hold the "do over" for it?

It's time to Pause and Rethink:

Our research won't stop. We've found insider influence, conflicts, and a failing bank with mortgages to the developers. The Governor, Comptroller General, SEC, FDIC, and SC Board of Financial Institutions are involved. Investigative reporters and statewide press are now covering the story. More investigative agencies will become involved. Are you prepared to withstand **intense** scrutiny?

Our Council must perform extensive checks into the companies, principals, associates, and investors involved in **every** aspect of this project. You're asking taxpayers to fund a \$5.5M gift and bailout. We deserve to know who they are and hear the **full details** of their credit worthiness and overall financial stability.

One Councilman has recused himself. A potential for conflict still exists among remaining Councilmen.

Given the raging controversy and involvement of so many external agencies, we deserve to know whether additional conflicts exist **before** you vote again. Each Councilmen should carefully examine his own situation for the slightest conflict. If you've ever provided health, grading, timber, or financial services, or hold accounts receivable with the principals, their companies, subsidiaries, employees, investors, friends, or associates, disclose it to Mr. Martin and recuse yourself. Otherwise, signed statements certifying that none exists are appropriate, just as Clemson administrators provided for HighPointe last year.

The public deserves **every** reassurance if it is to bear the cost of **your** \$5.5M gift of **our** tax money.

To Oconee County Taxpayers:

Summary:

It has been a while since we provided an update on HighPointe-Pointewest (HP, PW, and HPPW are used in further references below). Intense citizen opposition and legal mis-steps have caused slowed consideration by the Council. During this period, multiple individuals have been researching activities underlying the project, and the findings are causing more concern than ever.

Researchers have found that insider influence could have been involved at Tri-County Tech (TCTC) where the exclusive HP contract was not reviewed by the Board. HPPW principals resigned from the TCTC Board and Foundation when allegations of impropriety arose last year. A principal sits on the Board of Community South Bank (CSB) in Easley which is under-capitalized, has signed consent orders with the FDIC and SEC, holds mortgages with the principals, and may be failing.

A number of banks hold multiple mortgages related to HPPW from the principals and their companies. We are not financial professionals, but our concerns that the project is highly leveraged and presents substantial risks for any public investment appear to have been validated.

The Council continues to challenge our characterization of the project as a gift of \$5.5M to the developer, but the facts demonstrate our view remains valid. Our research also shows transparency has been lacking for Council actions related to HPPW; two votes have been conducted with little or no public notice or opportunity for public input to occur.

Our concerns over transparency issues extend to statements made by the Council's bond attorneys indicating that BB&T is the likely buyer of the bonds to be issued. We may be seeing another example of limited or no competitive bidding on a project involving substantial public funding.

The Council also speaks of the growth of future tax revenues if the public funding is provided. However, it has made NO mention of the costs of the expanded public services the development WILL require. Our research has found studies by MULTIPLE organizations, such as Clemson's Strom Thurmond Institute, that show residential developments NEVER generate sufficient tax revenue to pay for the public services they always require.

Our research has made us realize the public (including Pickens County) may become responsible for major brownfield cleanup costs if we participate in this project.

One Councilman has recused himself due to a possible conflict of interest, and a "do over" to correct the tainted first reading of ordinances has already occurred. We have identified a second Council action impacted by the same possible conflict of interest, but we have yet to see plans for correcting it with another "do over".

We have learned of multiple grounds that enable serious legal challenges against the unique approach used by our Council to provide public funding for a private project. So far, the project has been TOTALLY private. It has not changed in any material way except for a request for the public to fund a major gift to the developers.

The FDIC, the SEC, and the SC Board of Financial Institutions are already involved. Investigative reporters in Columbia are now covering the full HPPW story. More agencies and reporters will probably get involved soon.

The new issues uncovered in the past few weeks validate public calls for

the Council to closely examine the financial stability of all parties involved in HPPW, and for the remaining Councilmen to carefully examine their own situations and disclose any apparent conflicts they may have.

Overall, our Council is simply not asking sufficient probing questions to insure the HPPW project is truly a good investment for the public. Similar failures have led to multiple recent financial disasters for Oconee County taxpayers, including the new Westminster Fire Station which flared up again last week.

A complete discussion and links to numerous public documents underscoring the growing concerns taxpayers have with the \$5.5M HighPointe-Pointewest (HPPW) developer gift and bailout are provided below.

If you would like to communicate your feelings to the Council, please use this link and select "Send your concerns". PLEASE SEND YOUR MESSAGE TO THE OCOONEE COUNTY COUNCIL **ONLY**.

www.targetoc.org

Detailed Findings and Links to Public Documents:

Contrary to the understanding held by many, the \$5.5M is NOT a loan. It is a gift for the developers. True, the county is purchasing assets the developer will build, such as roads. However, other developers provide such assets at their OWN expense and GIVE them to the County simply to eliminate the expense of future maintenance. Ordinances 2010-05, 2010-06, and 2010-07 (latest versions posted by the Council around 2/10) passed 5-0 during the first reading on 2/16 show the bonds will be repaid by the public, not the developer. We thus consider the \$5.5M to be an outright gift for the developer.

The Council now characterizes the size of the bond issue as \$3 - 3.5M, but on 1/26 it passed a resolution asking the SC Budget and Control Board for permission to issue bonds up to \$5.5M. The petition sent by the Council to the Board also estimates project costs of NOT LESS THAN \$5.5M. Further, the Council has referred to its \$3 - 3.5M amount as "Phase I" and the application sent to Columbia references "1st issue". We therefore use the expected EVENTUAL amount of \$5.5M in our discussions. Here is a link to the Council's petition:

www.targetoc.org/oconee-ssrb-application.pdf

It is noteworthy that the 1/26 Council meeting was held completely in executive session except for one minute spent voting to go into executive session, and one minute at the end spent voting on the bond resolution and adjourning the meeting. We can find no previous indication that our Council would be considering the Special Source Revenue Bonds voted on that night. No public notice was provided that they were being considered, and no public comment was allowed. The public was essentially cut out of the entire process which initiated this \$5.5M giveaway, and most of it occurred during a totally closed session.

On 3/16, Councilman McCall disclosed a potential conflict of interest in the HPPW project, and recused himself from subsequent votes regarding HPPW. This potential conflict invalidated the 2/16 first reading of the necessary ordinances. Because HPPW was not on the PUBLISHED meeting agenda that night, the Chairman refused to allow HPPW opponents to speak in their order of signup. It is obvious that HPPW =WAS= on the Council's agenda, however, because the Council held a "do over" first reading without Mr. McCall that night. Thus, we have another example where, in what has become a highly controversial matter, the Council withheld all public notice of its intentions of voting on this project.

Because Mr. McCall also participated in the closed executive session and vote to begin the bonding process on 1/26, it appears the Council must now also redo the resolution requesting permission from Columbia to issue the bonds. We have not yet heard of any Council plan to address the apparent conflict and procedural error inherent in this crucial vote.

our findings also paint a picture of inside influence in multiple aspects of the project. Further, we have learned Community South Bank and Trust (CSB) in Easley may be failing. Principals in HPPW hold mortgages from CSB related to the HPPW project. Neal Workman, one of the principals, also sits on the Board of CSB. See this link:

www.sn1.com/irweblinkx/od.aspx?iid=4093830

Because Tri-County Technical College (TCTC) is so involved in the HPPW project, several related Freedom of Information Act (FOIA) requests have been made to them. TCTC has been very cooperative and prompt in responding; there has been no "pushback" as so often occurs with FOIA requests.

TCTC has confirmed that Mr. Workman was also on the Board (Commission) of TCTC when the contracts were signed between TCTC and HPPW. Mr. Workman resigned in February 2009. Tom Winkopp, another principal in HPPW, also resigned from the TCTC Foundation during the same period.

These resignations occurred during a period when allegations of impropriety were being made by Clemson University employees against senior Clemson officials regarding their financial participation in the HPPW project. The allegations were denied by all involved, but they reinforce the level of community concern that has existed over HPPW for more than a year. They also contribute to the overall concerns of insider influence among all the parties involved.

These links provide more information:

www.fitsnews.com/2009/03/23/sources-clemson-administrators-implicated-in-alleged-housing-scam
www.fitsnews.com/2009/03/23/tigertown-flatly-denies-housing-scam-reports
www.fitsnews.com/2009/03/25/clemson-administrators-file-affidavits-denying-housing-scam

From the FOIA requests, we also learned the contracts between HighPointe (HP) and TCTC did not require approval by the TCTC Board. Given the size and nature of the contracts, the inside access of the principals, and the potential for conflicts of interest among them, it seems unusual that no Board oversight and approval was required.

The contracts REQUIRE that ALL Bridge students live in the lavish and expensive HP development, at a cost of almost \$6000 for the academic year. Given these facts, the contracts would seem to be highly lucrative for the developers and their investors. On the surface, HP also seems to be lucrative for Oconee County taxpayers, a point often cited by our Council. However, the claimed tax "profits" are not nearly so good as they may seem. See more discussion below.

Here is a link to the contracts: www.targetoc.org/tctc-contract.pdf
Here is a summary of lavish life at HP:
www.targetoc.org/highpointe-amenities1.pdf
Here are pictures of lavish life at HP:
www.tomwinkopp.com/developments.php?details=35
Here is more information about the HPPW giveaway: www.targetoc.org

It is surprising that any Council would consider granting a \$5.5M gift plus major tax breaks for an EXISTING development like HP, with its

exclusive ties to an upscale customer base. The tax breaks result from the conversion of HP into a business park that allows the developers to pay a "fee in lieu of tax (FILOT)". FILOT arrangements provide a fixed fee for an extended period during which the developer is not subjected to the normal reassessments and frequent millage increases average taxpayers must bear. It also seems the County (and Pickens County as well) could be acquiring ultimate liabilities for brownfield cleanup costs through the creation of the business park.

The original contract was subsequently amended so TCTC can grant waivers that allow students to live outside HP. This change was probably due to cost factors as HP presents a very lavish and expensive lifestyle for many, if not most, students. Another FOIA request showed that TCTC granted 32 waivers for the 2009-10 year, out of somewhat more than 400 students. While the developer cited weather to our Council as the reason for a slowed HP construction schedule, this reduction in demand would seem to be a substantial reason as well. Another factor may be that revenues from HP have been pledged to secure mortgages for both HP and PW. The resulting lack of cash flow is also a possible cause.

Pointwest (PW) is where the fundamental problem lies. It is much more of a "normal" development, subject to the lack of sales in today's real estate market. Lakefront property sales are HEAVILY depressed. Banks are refusing to lend further for PW because of the depressed market. It is almost inconceivable that our Council would consider using the seemingly guaranteed tax revenues from HP to bailout PW, a related, highly risky, and highly publicized real estate venture.

Regardless of first appearances, though, the tax income is by NO MEANS all "profit". Our Council has NEVER mentioned new public costs AT ALL. In fact, numerous studies show the cost of public services for new residential developments, regardless of type, ALWAYS outstrips the new tax revenues generated. As an example, the Corinth-Shiloh fire district in which HPPW is located is already seeking to create a special tax district for improved fire protection.

Here are links to studies made by Clemson's Strom Thurmond Institute and by a county in GA facing situations somewhat similar to ours in Oconee County. They also refer to studies made in other states showing similar results. These studies may be the same ones referred to in a recent post in the OconeeCounty Yahoo Group concerning sewers in Fair Play.

www.targetoc.org/residential-ga.pdf GA residential study
www.targetoc.org/residential-sc.pdf SC residential study

Making matters worse, we have learned CSB faces the very real possibility of failure. CSB is classified as "under-capitalized", a very serious position. CSB has signed consent orders with the FDIC and SEC requiring improvement in its capital structure. Various required deadlines must be met, including as early as Friday, April 9. Banks which fail to meet such deadlines generally face takeover by the FDIC.

www.targetoc.org/csfc-sec.pdf SEC consent order
www.gsabusiness.com/news/33532-fdic-takes-closer-look-at-s-c-banks?rss=0
GSA News article covering stressed banks

The fact that Mr. Workman sat on the Board of TCTC, which granted him the highly lucrative contract with no Board oversight, and that Mr. Workman sits on the Board of a bank which may be failing and holds mortgages related to HPPW, is very disturbing. It is also disturbing that our research shows BB&T holds substantial mortgages related to HPPW, while BB&T is also frequently cited in Council meetings as a likely buyer of the proposed bonds. From these meetings, there seems to be much insider discussion occurring between the County, our Bond Counsel, and BB&T

regarding an area where we should be striving to handle every detail competitively. It should also be noted the Bond Counsel indicated in a recent Council meeting that the bonds "will have limited appeal".

Our research has discovered that a number of banks and mortgages are involved in financing HPPW; details are provided at the link shown below. We have tried to eliminate mortgages which have been satisfied. However, matching the numerous, highly complex HPPW mortgages with payoffs is exceedingly difficult to accomplish through available public records. Therefore, some of these mortgages may no longer be outstanding. As examples, we have excluded related satisfied mortgages issued by The Peoples Bank, SunTrust, and Wachovia.

We have found mortgages related to HPPW issued by CSB, BB&T, and Greer State Bank to the principals and their companies. We have also seen one of the principals mortgaging substantial personal assets to secure HPPW debts. The overall picture seems to confirm taxpayer concerns that the HPPW project is heavily leveraged and that taxpayers will be incurring a significant risk with any public involvement in this project.

This link provides numerous separate links to individual mortgages and other important documents we have found related to HPPW:

www.targetoc.org/hppw-mtg.htm

State officials in Columbia are highly concerned about the precedent being set by the gift to HPPW. After receiving information from us, the Governor and the Comptroller General opposed issuance of the bonds at the Budget and Control Board hearing. The issuance was ultimately approved, 3-2, after highly unusual and lengthy discussion. Officials have since told me the proposed method for providing public support for a private project has never occurred in South Carolina. We have also learned there are multiple significant legal grounds on which the bonds funding the giveaway can be challenged. We will be posting more information about this later.

We contend the reason bankers are refusing to lend the crucial \$5.5M developers need to proceed with a \$250M project arises from their professional knowledge of the factors cited above. It does NOT seem plausible that banks would categorically reject funding, amounting to only 2% of the total project, simply because it is for "infrastructure". If HPPW is truly the risk-free project our Council claims, then banks WOULD be willing to provide this 2% increment of the overall financing.

Given the widespread community opposition and these new findings, we may soon find that NO financial company, including BB&T, will have interest in purchasing the bonds if our Council continues pursuing this project.

Banks and the risky real estate investments that have hurt our entire Nation are now under close supervision by regulators and law enforcement officials. The FDIC, the SEC, and the SC Board of Financial Institutions are already involved. The FBI recently removed officials from a nearby bank in Georgia. Investigative reporters in Columbia are now covering the full HPPW story. It would not surprise us to see the SC Department of Revenue, the IRS, and SEC auditors become involved soon.

The time has come for our Council to perform extensive credit checks into the companies, the principals, their associates, and the investors involved in every aspect of the HPPW project. They are asking taxpayers to create this \$5.5M gift and bailout program. The public, in return, deserves to know who they are and hear the FULL DETAILS of their credit worthiness and overall financial stability.

As indicated above, one councilman has already recused himself from voting on this matter due to the appearance of a conflict of interest. Oconee

County is a relatively small area. The potential for similar conflicts among the remaining Councilmen exists. Given the growing controversy and the involvement of so many investigative agencies, the public deserves to know whether additional conflicts may exist BEFORE the giveaway proposal is voted on again. Each of the remaining Councilmen should carefully examine his own situation for potential conflicts and disclose them, or issue unequivocal statements certifying that none exist. The public deserves this reassurance if it is to bear the cost of the Council's proposed \$5.5M gift of public resources.

Bo Horne
888-2314

**Memorandum of Agreement
Between
Tri-County Technical College
And
Highpointe, LLC**

For Application To
The Bridge to Clemson University Housing and Amenities Requirements

This Memorandum of Agreement (MOA) establishes an agreement between Tri-County Technical College and Highpointe, LLC.

I. MISSION

Highpointe, LLC will provide Tri-County Technical College student facilities for the Bridge to Clemson University program at Highpointe of Clemson. Highpointe of Clemson is an upscale student community located 2.4 miles from Clemson University and 4.6 miles from Tri-County Technical College and is capable of supporting the anticipated future growth of the Bridge to Clemson University program. These facilities will include housing and amenities for students.

Together, the Parties enter into this Memorandum of Agreement to mutually provide for the anticipated needs of the Bridge to Clemson University program. Accordingly, Tri-County Technical College and Highpointe, LLC, operating under this MOA, agree as follows:

II. PURPOSE AND SCOPE

The scope of this agreement between Tri-County Technical College and Highpointe, LLC is described as follows:

Tri-County Technical College is unconditionally obligated to require and cause all Bridge to Clemson students to be housed at Highpointe of Clemson, located at 500 West cherry Road, Clemson, 29631 for the initial five (5) year period based on the following schedule:

August 1, 2009 and ending May 31, 2010 – 108 units, 432 students*
August 1, 2010 and ending May 31, 2011 – 180 units, 720 students*
August 1, 2011 and ending May 31, 2012 – 204 units, 816 students*
August 1, 2012 and ending May 31, 2013 – 228 units, 912 students*
August 1, 2013 and ending May 31, 2014 – 228 units, 912 students*

*These numbers represent the minimum number of Bridge students that will be required to live at Highpointe of Clemson.

The contract period will be five (5) years with rolling annual one (1) year renewals of additional five (5) year contracts (i.e. a new five (5) year contract will be renewed each year). The contract is renewable annually on March 12th per the original execution date of this agreement on March 12th, 2008. The lease amount per bedroom, per student for the August 1, 2009 to May 30th school year is five thousand one hundred dollars (\$5,100.00) payable in two equal installments of \$2,550.00 due in July and December.





- [Home](#)
- [Corporate Profile](#)
- [Officers & Directors](#)
- [Committee Charting](#)
- [Stock Information](#)
- [Total Return Calculator](#)
- [Historic Prices](#)
- [Dividends](#)
- [Basis Calculator](#)
- [Market Makers](#)
- [Press Releases](#)
- [Branch Locator](#)
- [SEC Filings](#)
- [Insider Filings](#)
- [Insider Transactions](#)
- [Financial Documents](#)
- [Financial Highlights](#)
- [Peer Analysis](#)
- [Deposit Marketshare](#)
- [Presentations](#)
- [Event Calendar](#)
- [Email Notification](#)
- [Information Request](#)
- [FAQ](#)
- [Contact Us](#)



Officers & Directors

Click on a person's name or image to view his or her biography.

[Expand All](#)

Executive Management



C. Allan Ducker III
Chief Executive Officer



John W. Hobbs
Chief Financial Officer

Board of Directors



D. Larry Brotherton
Chairman



Dave Edwards
Vice Chairman



G. Dial DuBose



C. Allan Ducker III



R. Wesley Hammond



John W. Hobbs



W. Michael Riddle



Joanne M. Rogers



B. Lynn Spencer



J. Neal Workman Jr.



Danny Youngblood

Copyright 2010, © SNL Financial LLC [Terms of Use](#)

[Privacy Policy](#) | [Terms & Conditions](#) |



© 2010, Community South Bank and Trust. All rights reserved.

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM 10-K

Annual Report Under Section 13 or 15(d) of The Securities Exchange Act of 1934

For The Fiscal Year December 31, 2009

Commission file number: 333-117053

CommunitySouth Financial Corporation

(Exact name of registrant as specified in its charter)

South Carolina
(State or other jurisdiction of
incorporation or organization)

20-0934786
(I.R.S. Employer Identification
No.)

6602 Calhoun Memorial Highway
Easley, South Carolina
(Address of principal executive offices)

29640
(Zip Code)

Issuer's telephone number: (864) 306-2540

Securities registered pursuant to Section 12(b) of the Exchange Act: **None**

Securities registered pursuant to Section 12(g) of the Exchange Act: **Common Stock**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act of 1934 during the past 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statement incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer
Non-accelerated filer
(Do not check if a smaller reporting company)

Accelerated filer
Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes No

The estimated aggregate market value of the Common Stock held by non-affiliates (shareholders holding less than 5% of an outstanding class of stock, excluding directors and executive officers) of the Company on June 30, 2009 was \$7,225,843.

The number of shares outstanding of the registrant's common stock, as of February 18, 2010 was 4,698,697.

FDIC takes closer look at S.C. banks

by Scott Miller

smiller@scbiznews.com

The Federal Deposit Insurance Corp. has pressured one Upstate bank to improve its capital position; another bank expects such an order is coming.

Following bank examinations in the fourth quarter, the FDIC has become more involved in a state that has not yet had a bank fail during the recession.

Greenville-based Palmetto Bancshares Inc. said in a filing with Securities and Exchange Commission this month that it expects to receive a written agreement from the FDIC to improve its capital position. The holding company for Palmetto Bank lost \$40 million last year and is no longer considered "well capitalized" by federal regulators.

Easley-based CommunitySouth Financial Corp. faces a more pressing situation. The bank is considered "under capitalized," and the FDIC has already gotten involved. In mid-February, CommunitySouth entered into a consent order with the FDIC and the South Carolina Board of Financial Institutions that placed restrictions on the bank's liquidity. CommunitySouth must raise capital quickly.

Also in the fourth quarter, Tidelands Bancshares Inc. based in Mount Pleasant entered into an informal memorandum of understanding with the FDIC, and Beach First National Bancshares Inc. of Myrtle Beach signed a consent order with the Office of the Comptroller of the Currency.

Banks that fail to meet FDIC directives could be placed in federal receivership. In the fourth quarter, 45 institutions failed, bringing the total number of failures for the year to 140, the highest annual total since 1992. Additionally, the FDIC said its "problem list" increased from 552 institutions at Sept. 30 to 702 at the end of the year.

"When you get a consent order, you're circling the drain," said Steven Mann, a finance professor at the Moore School of Business at the University of South Carolina.

That doesn't mean those banks are destined to fail, he said, but some will because they must compete for a limited amount of capital.

"At what price can they raise capital? When you're circling the drain, the cost of capital gets a lot more expensive," Mann said. "It becomes such that you have to pay so much for the capital that it won't be worth it to stay in business."

Adequately capitalized

Palmetto Bank has not received a consent order.

And a successful capital campaign could be conducted before the FDIC takes action, said Palmetto Bank President and CEO Sam Erwin.

"With that 10-K (annual report), we probably went a little more forward looking so that our investors are aware of what's out there," he said.

He also said that regardless of a potential FDIC order, the Palmetto Bank has been considering options to improve its capital

The documents described herein are highly inter-related and represent highly complex financial transactions only professionals may adequately understand. We present them only as factual evidence that numerous complex financial transactions related to HighPointe-PointeWest have occurred. We leave the ultimate interpretation of the totality of this material to professionals. It is possible that some of the mortgages listed below have been satisfied. Any inaccuracies that may be present in the material presented here are unintentional.

1. 12/07: PointeWest buys West Point property for \$12.6M [db1634p264](#)
6. 3/10: HighPointe may have obligations for Brownfield cleanup [db1762p179](#)
8. 12/07: PointeWest mortgage from BBT for \$4.5M [db2550p1](#)
9. 12/07: PointeWest assigns leases and rents for above to BBT *** [db2550p8](#)
10. 12/07: PointeWest assigns construction documents to BBT *** [db2550p14](#)
14. 5/08: PointeWest mortgage from BBT for \$1.01M [db2617p185](#)
16. 12/08: Clemson Academic Ventures mortgage from Greer State Bank for 2.16M (Winkopp, Workman, Huss) [db2686p162](#)
17. 12/08: Clemson Academic Ventures assigns leases and rents to Greer [db2686p207](#)
18. 1/09: PointeWest assigns more leases and rents to BBT to secure mortgages: *** [db2693p172](#)
 - \$6.19M for PointeWest Loan
 - 3.15M for Development HighPointe Loan
 - 6.5M for Bridge to Clemson HighPointe Loan
 - 7.6M for Phase I Condo HighPointe Loan
 - 1.4M for Harts Cove
19. 12/31/09: Workman mortgages personal property with BBT to secure new \$2M promissory note related to HighPointe [db2831p53](#)
20. 12/31/09: Yawnto (Workman) mortgages Ullica Mill property with BBT to secure new \$2M promissory note related to HighPointe [db2831p61](#)
21. 1/15/10: PointeWest obtains new \$3.32M mortgage from BBT known as: [db2834p144](#)
 - Bridge to HighPointe Clemson Loan III-A, HighPointe, PointeWest, Harts Cove, and Jacabb are all involved. Loans shown in [db2693p172](#) and [db2693p165](#) are modified. See items 36 - 42 for mortgages for PointeWest, HighPointe, Jacaab, and Harts Cove and assignments of leases and rents.
22. 1/15/10: HighPointe obtains mortgage from Greer State Bank for \$1.75M [db2834p162](#)
23. 1/15/10: HighPointe assigns above leases and rents to Greer State Bank

db2834p170

27. 6/19/08: Community South issues mortgage for \$800k to PointeWest, Valley Walk **mtg3865-193**

28. 6/19/08: Community South modifies \$1.6M letter of credit for PointeWest, Valley Walk, University Park **mtg3865-212**

30. 3/18/10: Article in GSA Business covers SEC and FDIC consent orders against Community South and involvement of SC Board of Financial Institutions **gsa news**

32. 2009 SEC 10-K: Report for Community South Bank, includes consent order **csfc-sec**

33. 2/06: GA study shows cost of residential property exceeds ad valorem tax gained **residential-ga**

34. 2/08: Strom Thurmond Institute study shows same results as in GA **residential-sc**

35. 12/08: Exclusive contract between TCT and HighPointe **tctc-contract**
2/10: Modifications allow TCT to provide waivers of exclusivity

36. 1/06/09: BBT issues mortgages to HighPointe, PointeWest, Jacabb, and **db2693p165**

37. 1/06/09: Harts Cove, and receives assignment of leases and rents. **db2693p147**

38. 1/06/09: See mortgage amounts at item 18 above. See later modifications **db2693p111**

39. 1/06/09: at item 21 above. **db2693p154**

40. 1/06/09: **db2693p136**

41. 1/06/09: **db2693p118**

42. 1/06/09: **db2693p129**

*** These documents erroneously show the property as being in the City of Clemson.

STATE OF SOUTH CAROLINA)
)
COUNTY OF COONEE)

BB&T



MORTGAGE OF REAL ESTATE

THIS MORTGAGE OF REAL ESTATE (this "Mortgage"), made this 31st day of December, 2005, by JAMES NEAL WORKMAN AND FAY W. WORKMAN, each individuals and residents of the State of South Carolina (hereinafter referred to collectively as "Mortgagor"), granted and gives to BRANCH BANKING AND TRUST COMPANY (hereinafter referred to as "Mortgagee"), a corporation organized and existing under the laws of the State of North Carolina, whose address is P.O. Box 1790, Asheville, NC 28812.

WHEREAS, High Point, LLC, a South Carolina limited liability company ("Borrower"), is indebted to Mortgagee as evidenced by a certain Promissory Note dated on or about herewith, executed in favor of Mortgagee in the principal sum of Two Million and 00/100 Dollars (\$2,000,000.00) (the "Note"), and any renewals, extensions or modifications to such Note, the terms of which are incorporated herein by reference. Where used herein, the term "Note" or "Notes" shall be deemed to include the note above described, along with any other notes, additional advance agreements, or other documents now or hereafter evidencing any debt whatsoever incurred by Mortgagor or Borrower and payable to Mortgagee, including without limitation all indebtedness and obligations of the Mortgagor or Borrower to Mortgagee (or an affiliate of Mortgagee) under any interest rate swap transactions, interest rate cap and/or floor transactions, interest rate collar transactions, swap agreements (as defined in U.S.C. § 101) or other similar contracts or agreements, including without limitation any ISDA Master Agreement executed by Mortgagor or any Borrower and all schedules and confirmations entered into in connection therewith, hereinafter collectively referred to as a "Hedge Agreement", the terms of which are incorporated herein by reference.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that the Mortgagor, for and in consideration of the aforesaid indebtedness and in order to secure the payment thereof together with any renewals or extensions or modifications thereof, and also in accordance with § 29-2-20, as amended, of the Code of Laws of South Carolina (1976) or any such successor statute as may apply:

1. All future advances and reimbursements that may subsequently be made to the Mortgagor or Borrower evidenced by the Note and by all renewals and extensions thereof; and

2. All other indebtedness of Mortgagor or Borrower to Mortgagee, now or hereafter existing, whether direct or indirect, including without limitation any advances made by Mortgagee to pay drawings on any irrevocable standby or commercial letter of credit issued on the account of the Mortgagor or any Borrower pursuant to an application, therefore, the MAXIMUM AMOUNT OF ALL INDEBTEDNESS OUTSTANDING AT ANY ONE TIME SECURED HEREBY NOT TO EXCEED \$4,000,000 plus interest thereon, all charges and expenses of collection incurred by Mortgagee including court costs and maximum attorneys' fees, has granted, conveyed, sold, assigned, released and does by these presents grant, bargain, sell, assign and release unto the Mortgagee, its successors and assigns the following described property:

See Exhibit A attached hereto and incorporated herein.

Together with all and singular improvements thereon and the rights, members, hereditaments and appurtenances to the same belonging or in any way appertaining; all the rents, issues, and profits thereof (provided, however, that, unless otherwise agreed, the Mortgagor shall be entitled to collect and retain the said rents, issues, and profits until default hereunder); and including all heating, plumbing, and lighting fixtures and equipment now or hereafter attached to or used in connection with the real estate herein described (herein collectively the "Property").

TO HAVE AND TO HOLD, all the said Property unto the Mortgagee, its successors and assigns, forever.

Let:
Olson ew
PO Box 1633
Clemson SC 29632
1400 207588

RECORDED

NOTARIAL PUBLIC
JAMES W. ...
COMM. EX. ...

HT001167008248H140115644800

FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS

STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)
DECLARATION OF COVENANTS
AND RESTRICTIONS

2010 MAR - 2 A 11: 26

Doc ID: 00564022007 Type: LEE
1762 Pg 179-185

THIS DECLARATION OF COVENANTS AND RESTRICTIONS (Declaration) is made and entered into this 22 day of February 2010, by Highpointe, LLC a South Carolina Limited Liability Company (hereinafter referred to as Highpointe).

RECITALS

WHEREAS, Highpointe is the owner of certain real property in Oconee County, South Carolina, more particularly described in Exhibit A attached hereto and incorporated herein by reference ("Property"); and

WHEREAS, an approximately 6.39 acre Fly Ash Landfill located on the Northern Tract Property was closed in July 1998 pursuant to the WestPoint Stevens, Inc.'s (Facility ID #373317-1601) Department approved closure plan. On July 30, 2006, the Department transferred Post Closure Permit for South Carolina Industrial Waste Permit 135 (IWP-135) to Pointe West, Inc. The Post Closure care period for IWP-135 began on July 31, 1998 and will end on July 31, 2026, unless the Department deems otherwise.

WHEREAS, the Property is a portion of the Northern Tract Property subject to Voluntary Cleanup Contract 07-4995-NRP (VCC) entered into by the South Carolina Department of Health and Environmental Control and Pointe West, Inc. pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. § 44-56-710, et seq. (2002 & Supp. 2007), as amended on June 11, 2008, the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601, et seq., and the South Carolina Hazardous Waste Management Act (HWMA), S.C. Code Ann. § 44-56-200. The Property subject to the VCC was identified as approximately 113 acres north of Old Cherry Road, identified as Oconee County Tax Map Serial Number 271-00-01-001, and approximately 220 acres south of Old Cherry Road, identified as TMS #271-00-01-002. These parcels were referenced in the VCC as the "Northern Tract" and the "Southern Tract", respectively; and

WHEREAS, the terms and conditions of the VCC inure to new purchasers; and

WHEREAS, on December 18, 2007, Highpointe acquired approximately 112 acres of the Northern Tract Property located north of Old Cherry Road further identified as Oconee County Tax Map Serial Number 271-00-01-001 excepting the 1-acre newly identified TMS 271-00-01-005 parcel; and

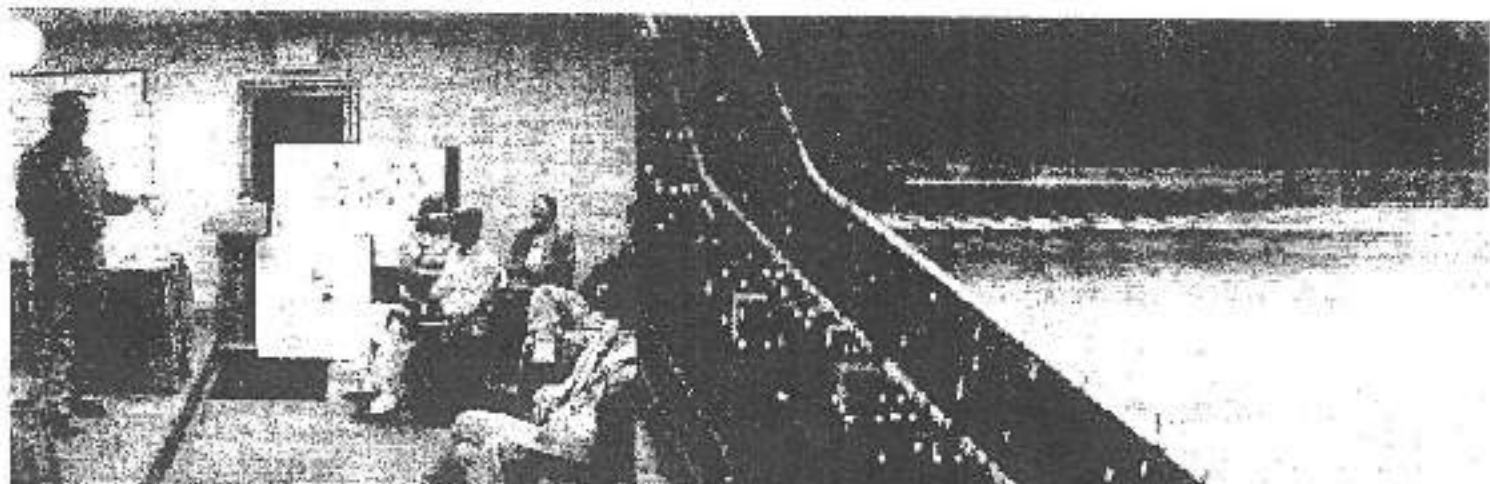
WHEREAS, a Declaration of Covenants and Restrictions for the Property was recorded in Book 1674 at Page 120-124 by Oconee County on July 31, 2008; and

0000696

13th Oconee
County PO Box 1633
Clemson, SC 29633

2010 MAR - 2 A 11: 26

FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS



Managing Residential Growth in South Carolina

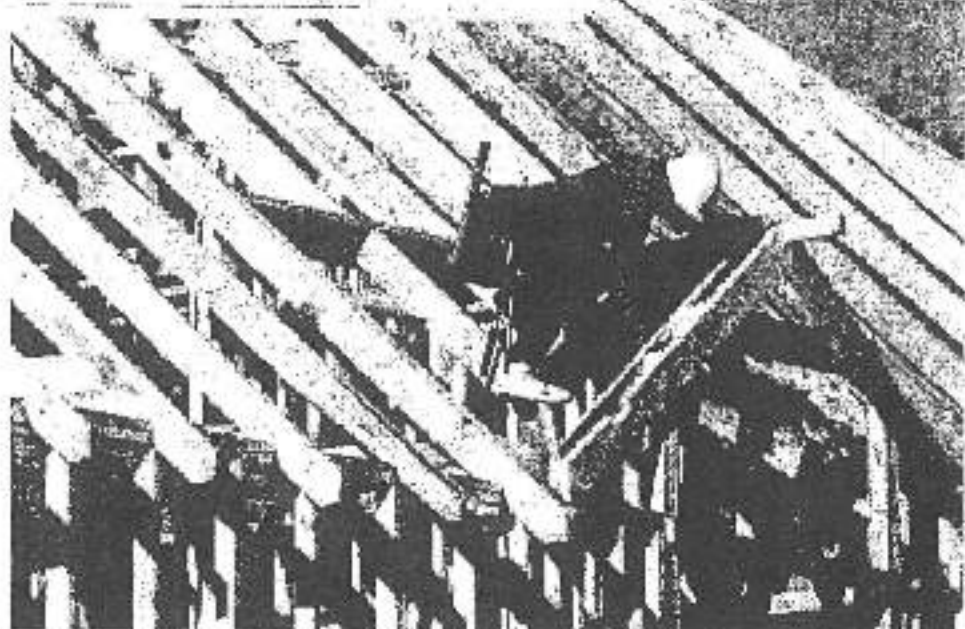
A Citizen's Guide

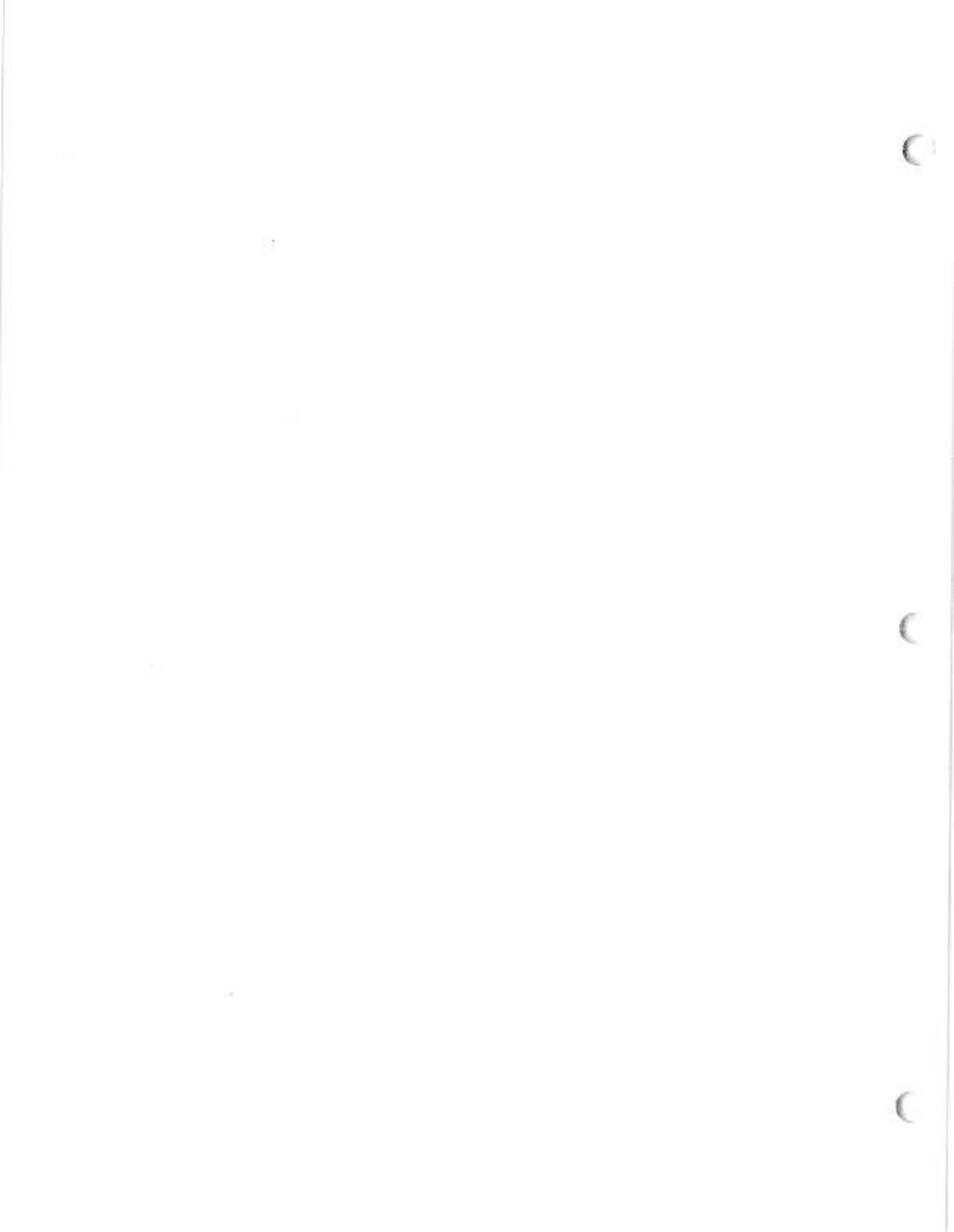
By Holley H. Ulbrich
Dennis S. London

February 2008

Strom Thurmond Institute
of Government and Public Affairs
Clemson University

Funded by the Jim Self
Center on the Future





2010

Home Builders Day at the Capitol

TALKING POINTS



MANDATORY FIRE SPRINKLER BILLS (S.1057/H.4663)

CALL TO ACTION

For several years now special interests have been pushing to have residential fire sprinklers mandated in every new home in America. In 2008, these special interests were finally successful in getting residential fire sprinklers mandated in the IRC 2009. Unless state legislation is passed to opt out of this provision of the SC building code, every new house built in SC built after January 2011 will be required to have fire sprinklers.

MESSAGE

Mandating residential fire sprinklers will be the largest assault on affordable housing in the last ten years. The issue is not only the principle of consumer choice versus government mandates, but more importantly, a government mandate that will be difficult to implement statewide even under ideal circumstances. **Please support consumer choice by supporting S.1057 and H.4663.**

1. Government mandates are unnecessary. Why should state government mandate fire sprinklers when consumers have consistently indicated that they do not want them? No law on record prevents home owners from installing fire sprinklers in their home today, however, very few home owners choose to have them installed because, as national polls outline, the consumer views sprinklers as expensive, unnecessary, and a high cost to benefit expenditure.

2. Smoke detectors provide excellent protection. The SC Building Code requires hard-wired interconnected smoke detectors in all new homes. The National Fire Protection Association (NFPA) reports that a majority of residential fire deaths occur in homes absent smoke detectors or functioning smoke detectors (older and mobile homes). The NFPA also reported that the chance of surviving a home fire when working smoke detectors are present is **99.45%**!

3. Fire sprinklers can be very expensive. The actual cost quoted in SC (January 2008) is \$4-\$6/square foot for the installation of the sprinkler equipment alone. In addition, the cost of installing water lines, tap or water usage fees, and meters to the house to handle the increased water capacity could easily add another \$2-\$3 per square foot to the cost even under ideal circumstances.

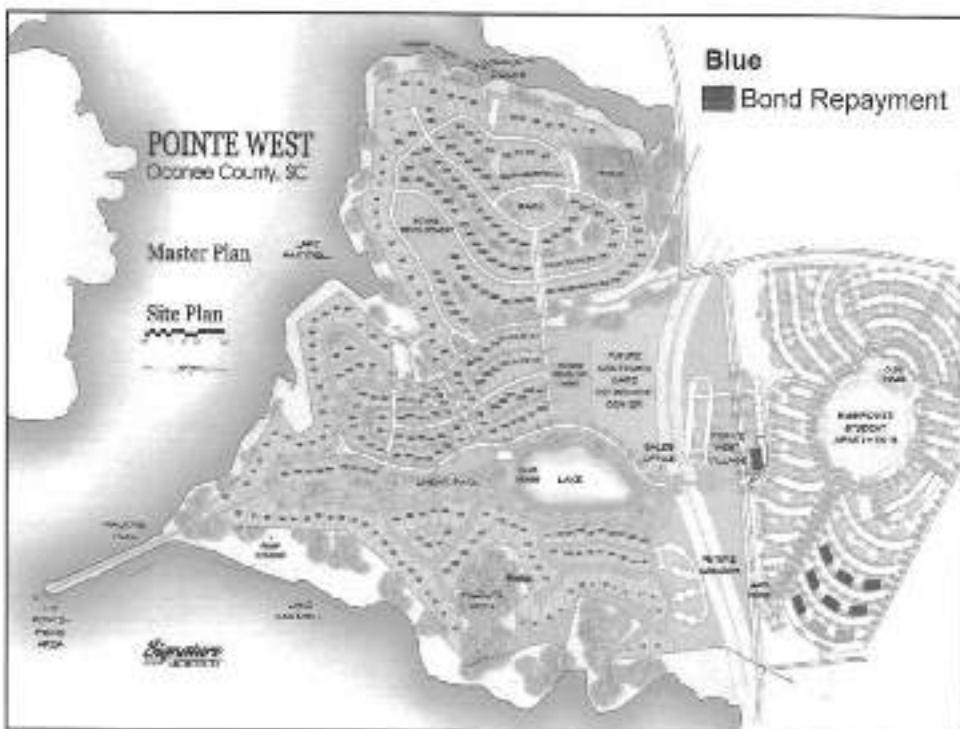
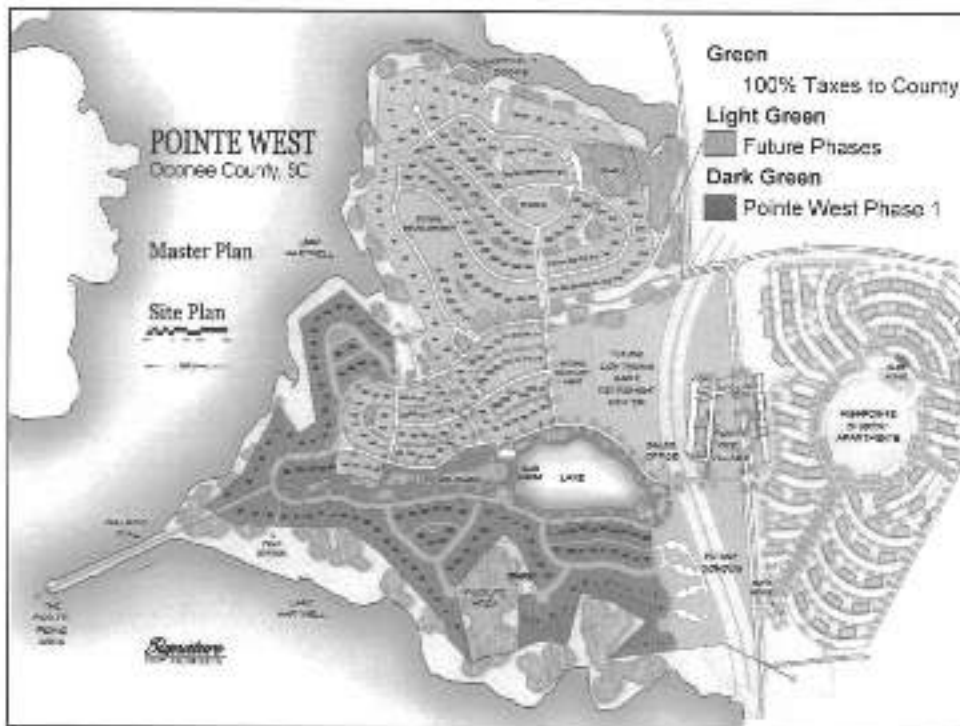
Total cost per house: \$7,000-\$21,000

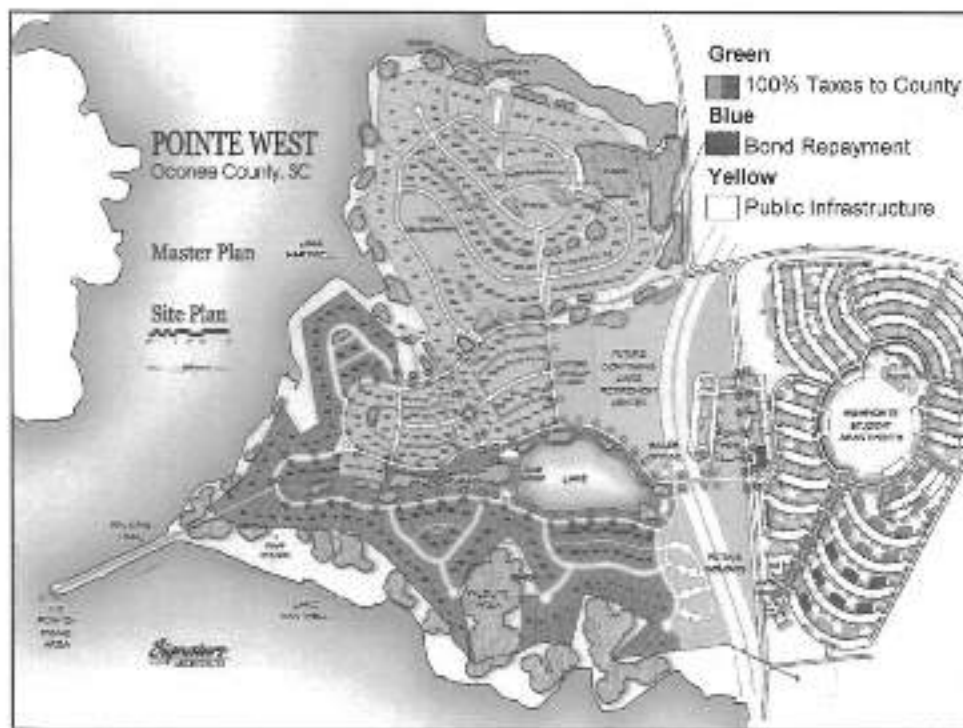
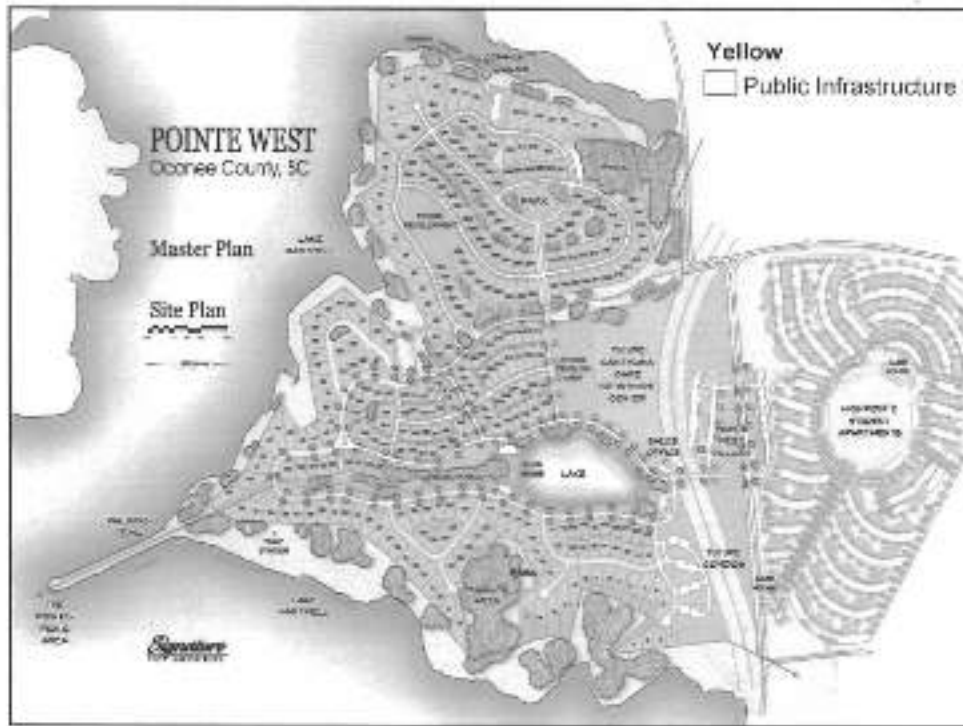
Total cost to taxpayers: \$187.5 million/year

4. Housing Affordability will be hurt. According to economists for every \$1,000 increase in the cost of a house, a substantial number of first-time SC home buyers will be forced out of the market. They will be forced to stay in older, less safe homes and the economy will suffer as well. The mandate also threatens a recovering SC home building industry that is expected to build 17,000 homes in 2010, which will generate \$2.7 billion in income for SC residents, generate \$586 million in state/local taxes, and fund 48,552 full-time jobs in SC this year.

5. Fire sprinkler debate should not focus on new homes. If the goal is to reduce fire fatalities, the focus should be on older homes and mobile homes, not new homes. Residential fire sprinklers are more effective in the reduction of fire damage to property than they are to reducing residential fire fatalities.

7. Other states have rejected these mandates. Thirteen other states (Georgia, Alabama, South Dakota, North Dakota, New Mexico, Idaho, Utah, Texas, Missouri, Washington, Minnesota, Arkansas and Tennessee) have already passed legislation to stop fire sprinkler mandates with many others, including North Carolina, expected to follow quickly. Only California, New Hampshire and New Jersey have adopted mandated sprinklers.







HIGHPOINTE
OF CLEMSON

A student community like no other.



POINTE WEST
V I L L A G E



TOM WINKOPP
REALTOR/DEVELOPER, LLC
Developing our community's potential



Trehel

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE
PROCLAMATION P-2010-01

National Library Week 2010 Proclamation

WHEREAS, libraries everywhere play a vital role in supporting the quality of life in their communities;

WHEREAS, our nation's school, academic, public and special libraries make a difference in the lives of millions of Americans, today, more than ever;

WHEREAS, librarians are trained professionals, helping people of all ages and backgrounds find and interpret the information they need to live, learn and work in a challenging economy;

WHEREAS, libraries serve as crucial technology hubs for people in need of free Web access, computer training, and assistance finding job resources;

WHEREAS, libraries are part of the American Dream – places for opportunity, education, self-help and lifelong learning;

WHEREAS, library use is up nationwide among all types of library users, continuing a decade-long trend;

WHEREAS, libraries, librarians, library workers and supporters across America are celebrating National Library Week.

NOW, THEREFORE, be it resolved that the Oconee County Council proclaim National Library Week, April 11-17, 2010.

PROCLAIMED in meeting, duly assembled, this 6th day of April, 2010.

FOR OCONEE COUNTY:

Reginald T. Dexter
Chairman, District V

ATTEST:

Elizabeth G. Hulse
Oconee County Clerk to Council

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE
ORDINANCE 2010-04

**AN ORDINANCE TO AMEND THE AGREEMENT AUTHORIZED BY
ORDINANCES NO. 2006-027 AND 2008-017 RELATING TO THE
INDUSTRIAL/BUSINESS PARK OF OCONEE AND PICKENS
COUNTIES SO AS TO ENLARGE THE PARK.**

WHEREAS, pursuant to Ordinance No. 2006-027 enacted on December 5, 2006 by Oconee County Council, Oconee County (the "County") entered into an Agreement for Development of Joint County Industrial and Business Park dated as of January 16, 2007 with Pickens County (the "Agreement"), which was subsequently amended by Ordinance No. 2008-17 enacted on October 21, 2008 by the County resulting in the Agreement as amended by the First Amendment to the Agreement dated November 3, 2008 (hereinafter collectively referred to as the "Park Agreement"); and

WHEREAS, pursuant to Section 3 of the Park Agreement, the boundaries of the park created therein (the "Park") may be enlarged pursuant to ordinances of the respective County Councils of the County and Pickens County; and

WHEREAS, the County is desirous of enlarging the Park by the addition of the property described on Exhibit A of the Second Amendment to the Agreement, attached hereto; and

NOW, THEREFORE, be it ordained by Oconee County Council that the Park Agreement is hereby and shall be amended by the Second Amendment to the Agreement to include the property in Oconee County described in the schedule attached to the Second Amendment to the Agreement as Exhibit A (as such description may be hereafter refined), and that the Chairman of Oconee County Council is hereby authorized to execute and deliver any desired amendments to the Park Agreement necessary to accomplish the within enlargement.

Section 1. The Chairman of the County Council and the Clerk of the County Council, for and on behalf of the County, are hereby each authorized and directed to do any and all things necessary to effect the execution and delivery of the Second Amendment to the Agreement and the performance of all obligations of the County under and pursuant to the Second Amendment to the Agreement and this Ordinance.

Section 2. All orders, resolutions, ordinances and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed and this Ordinance shall take effect and be in full force from and after its passage and approval.

DONE in meeting duly assembled this ____ day of March, 2010.

OCONEE COUNTY, SOUTH CAROLINA

(SEAL)

By: _____
Reginald T. Dexter, Chairman, County Council
Oconee County, South Carolina

ATTEST:

By: _____
Elizabeth G. Hulse, Clerk to County Council
Oconee County, South Carolina

First Reading: February 16, 2010
Second Reading: March 16, 2010
Public Hearing: April 13, 2010
Third Reading: April 13, 2010

Addition to Exhibit A (Oconee County)
Agreement for Development of Joint County
Industrial Park dated as of January 16, 2007,
Amended on November 3, 2008
and _____, 2010
Between Oconee County and Pickens County

Tract 3 Greenfield Automotive Industries, Inc.

All that piece, parcel or tract of land situate, lying and being in the County of Oconee, State of South Carolina, located on the Southern side of U.S. Highway 76 and 123 and being more particularly shown and designated as a tract of land containing 78.20 acres, more or less, on a plat entitled "Plat of a Tract of Land Surveyed at the Request of The First National Bank of Boston" by Farmer & Simpson Engineers, dated June 3, 1986 and recorded in the office of the Clerk of Court of Oconee County, South Carolina in Plat Book P-51 at page 132, and being more particularly described, according to said plat as follows:

Beginning at an iron pin (P.O.B.) located on the southwester edge of the right of way for U.S. Highway 76 and 123 and at the northwestern most corner of said tract of land (said corner being a common corner with the northeastern most corner of lands now or formerly of Delta Corporation) and running thence along the southwestern edge of the right of way for U.S. Highway 76 and 123 S 63 degrees - 19' E 1,890.8 feet to an iron pin corner; thence S 22 degrees - 57' W 456.9 feet to an iron pin corner; thence S 02 degrees -07' E 261.1 feet to a nail and bottle top; thence S 38 degrees -42' W 243.9 feet to a nail and bottle top located within the right of way for Highway S-439; thence S 32 degrees - 40' W 248.5 feet to a nail and bottle top located in the center of the right of way for Highway S-439; thence S 25 degrees - 27' W 240.3 feet to an iron pin corner; thence N 86 degrees 32' W 249.9 feet to an iron pin corner; thence S 86 degrees-19' W 593.3 feet to an iron pin corner; thence S 09 degrees - 16' W 241.6 feet to an iron pin corner; thence N 78 degrees - 56' W 673.4 feet to an iron pin corner; thence N 05 degrees - 25' W 398.7 feet to an iron pin corner; thence N 09 degrees - 32' E 798.4 feet to an iron pin corner; thence N 23 degrees - 02' W 365.0 feet to an iron pin corner; thence N 75 degrees - 09' E 132.3 feet to an iron pin corner; thence N 24 degrees - 28' E 796.4 feet to the POINT OF BEGINNING. Said tract of land is bounded on the North by the right of way for U.S. Highway 76 and 123, on the East by lands of various owners, on the South by lands now or formerly of Clemson University and U.S. Government Hartwell Reservoir and on the West by lands now or formerly of U.S. Government Hartwell Reservoir and Delta Corporation.

LESS AND EXCEPT all that certain piece, parcel or tract of land conveyed from Greenfield Industries, Inc., predecessor in interest of Grantor herein, by deed dated December 22, 2003, and recorded on December 31, 2003, in the Office of the Register of Deeds of Oconee County, South Carolina in Book 1302, page 345.

LESS AND EXCEPT all that certain piece, parcel or tract of land conveyed from Greenfield Industries, Inc., predecessor in interest of Grantor herein, by deed dated March 4, 1996 and recorded on April 10, 1996 in the Office of the Register of Deeds of Oconee County, South Carolina in Book 857, page 305.

BEING commonly referred to as 2501 Davis Creek Road, Seneca, Oconee County, South Carolina and as Tax Map/Parcel Numbers 226-00-04-006 and 226-00-04-020.



STATE OF SOUTH CAROLINA)	
)	SECOND AMENDMENT OF AGREEMENT
COUNTY OF OCONEE)	FOR DEVELOPMENT FOR JOINT
COUNTY OF PICKENS)	INDUSTRIAL PARK

THIS AGREEMENT for the second amendment of an agreement for the development of a joint county industrial/business park located both within Oconee County, South Carolina and Pickens County, South Carolina, such original agreement dated January 16, 2007, and subsequently amended on November 3, 2008, by and between the County of Oconee and the County of Pickens both political subdivisions of the State of South Carolina (the "Agreement"), is made and entered into as of this ___ day of March, 2010 by and between the parties hereto (the "Second Amendment to Agreement").

RECITALS

WHEREAS, pursuant to the Agreement, Oconee County, South Carolina ("Oconee County"), and Pickens County, South Carolina ("Pickens County") in order to promote economic development and thus provide additional employment opportunities within both of said counties, have established in Oconee County and Pickens County a Joint County Industrial and Business Park (the "Park"); and

WHEREAS, as a consequence of the establishment of the Park, property therein is exempt from ad valorem taxation, but the owners or lessees of such property are required to pay annual fees in an amount equal to that amount for which such owner or lessee would be liable except for such exemption; and

WHEREAS, pursuant to the Agreement, Oconee County and Pickens County have agreed to accept responsibility for the costs of infrastructure, maintenance, management, promotional costs, and other appropriate costs associated with the establishment and operation of the Park; and

WHEREAS, Oconee County and Pickens County desire to amend the Agreement, as previously amended, as more specifically provided below;

NOW, THEREFORE, in consideration of the mutual agreement, representations and benefits contained in this Second Amendment to Agreement and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. **Binding Agreement.** This Second Amendment to Agreement serves as a written instrument amending the entire Agreement between the parties, as previously amended, and shall be binding on Oconee County and Pickens County, their successors and assigns.

2. **Authorization.** Article VIII, Section 13(d), of the Constitution of South Carolina (the "Constitution") provides that counties may jointly develop an industrial or business park with other counties within the geographical boundaries of one or more of the member counties, provided that certain conditions specified therein are met and further provided that the

General Assembly of the State of South Carolina provides by law a means by which the value of property in such park will be considered for purposes of bonded indebtedness of political subdivisions and school districts and for purposes of computing the index of taxpaying ability for school districts. Section 4-1-170, Code of Laws of South Carolina, 1976, as amended ("Section 4-1-170"), satisfies the conditions imposed by Article VIII, Section 13(d), of the Constitution and provides the statutory vehicle whereby a joint county industrial park may be created.

3. **Second Amendment to the Agreement.** As of the date of this Second Amendment to the Agreement, the First Amendment to the Agreement and the Agreement as previously amended is further amended, in accordance with Section 3(B) of the Agreement, so to expand the Park premises in Oconee County by the addition of one (1) tract of land, to be shown as "Tract 3" on the revised Exhibit A, attached hereto, which shall amend, replace, and supersede the previously amended Exhibit A to the Agreement which was in effect prior to execution of this Second Amendment to Agreement.

4. **Severability.** In the event and to the extent (and only to the extent) that any provision or any part of a provision of this Second Amendment to Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable the remainder of that provision or any other provision or part of a provision of this Second Amendment to the Agreement.

5. **Termination.** All other terms and conditions of the Agreement as amended by this Second Amendment to the Agreement, and as previously amended, shall remain in full force and effect.

WITNESS our hands and seals of this ____ day of March 2010.

OCONEE COUNTY, SOUTH CAROLINA

By: _____
Reginald T. Dexter, Chairman of County Council
Oconee County, South Carolina

By: _____
Elizabeth G. Hulse, Clerk to County Council
Oconee County, South Carolina

WITNESS our hands and seals as of this ____ day of March, 2010.

PICKENS COUNTY, SOUTH CAROLINA

By: _____
G. Neil Smith, Chairman of County Council
Pickens County, South Carolina

ATTEST:

By: _____
Donna Owens, Clerk, County Council
Pickens County, South Carolina

**EXHIBIT A
LAND DESCRIPTION
OCONEE COUNTY**

TRACT 1

Timken US Corporation
430 Torrington Road
Walhalla, South Carolina 29691

All that certain piece, parcel or tract of land situate, lying and being in West Union School District, Oconee County, South Carolina, containing 103.45 acres, more or less, as will appear by plat thereof prepared by Schumacher Engineering Services, Dated September 23, 1966, revised November 9, 1966 and February 20, 1967, recorded in Plat Book P-29, page 132 in the office of the Clerk of Court for Oconee County, South Carolina. BEGINNING at a point in the center of Road S 37-324, thence S 75-13 E 34.7 feet to an iron pin corner, old; thence S 75-13 E 1464.6 feet to an iron pin corner, old; thence S 18-16 W 1418.89 feet to an iron pin corner, new; thence N 73-32 W 811.15 feet to an iron pin corner, old; thence S 05-28 W 481 feet to an iron pin corner, old; thence N 74-34 W 1248.93 feet to an iron pin corner, new; thence N 15-32 E 445.85 feet to L.P.O.; thence N 70-08 W 124.93 feet to L.P.O.; thence N 15-20 E 1604.90 feet to L.P.O.; thence N 74-38 W 1050.31 to a stone corner, old; thence N09-41 W 237.32 feet to L.P.O.; thence N 76-47 E 1351.79 feet to a nail in the center of bituminous road, designated Point "B"; thence S 26-42 E 474.8 feet along center of road to a nail; thence S 23-51 E 276.8 feet along center of road to a nail; thence S 16-07 E 264.8 feet along center of road to a nail; thence S 09-20 E 222.8 feet along center of road to point designated Point "A"; same being the point of beginning. Said tract being the major portion of a tract of land conveyed to the Torrington Company (Maine) by Piedmont-Oconee Corp. by deed dated June 17, 1960, recorded in Deed Book 8-F, page 8, and the property conveyed by deed of Leroy C. Martin and Raleigh I. Martin to the Torrington Company (Maine) dated January 25, 1967, recorded in Deed Book 10-B at page 35, which said conveyance was made to make the center line of road the property line and by deed of James Robert LeCroy to the Torrington Company (Maine) dated February 14, 1967, recorded in Deed Book 10-B, page 34 which deed was made to make the center line of road the line; less a strip of land conveyed by The Torrington Company (Maine) to James Robert LeCroy by deed dated July 25, 1967, recorded in Deed Book 10-E, page 87, which deed was made for the purpose of making the center line of the road the property line.

TRACT 2

BorgWarner Torqtransfer Systems Inc.

All that certain piece, parcel or tract of land, situate, lying and being in the State of South Carolina, County of Oconee, Township of Seneca, containing 78.176 acres, more or less and shown and more fully described by metes and bounds on plat of survey thereof made by R. Jay Cooper, P.E. & L.S. dated April 6, 1990, which plat is recorded in the Office of the Clerk of Court for Oconee County in Plat Book A-54, pages 9 and 10 and which is incorporated herein by reference.

The within described property was conveyed to Borg-Warner Powertrain Systems Corporation by deed of Emhart Industries, Inc. dated September 26, 1995 and recorded in the Office of the Clerk of Court for Oconee County in Deed Book 834 at page 313 on November 5, 1995.

TRACT 3

Greenfield Automotive Industries, Inc.

All that piece, parcel or tract of land situate, lying and being in the County of Oconee, State of South Carolina, located on the Southern side of U.S. Highway 76 and 123 and being more particularly shown and designated as a tract of land containing 78.20 acres, more or less, on a plat entitled "Plat of a Tract of Land Surveyed at the Request of The First National Bank of Boston" by Farmer & Simpson Engineers, dated June 3, 1986 and recorded in the office of the Clerk of Court of Oconee County, South Carolina in Plat Book P-51 at page 132, and being more particularly described, according to said plat as follows:

Beginning at an iron pin (P.O.B.) located on the southwest edge of the right of way for U.S. Highway 76 and 123 and at the northwestern most corner of said tract of land (said corner being a common corner with the northeastern most corner of lands now or formerly of Delta Corporation) and running thence along the southwestern edge of the right of way for U.S. Highway 76 and 123 S 63 degrees - 19' E 1,890.8 feet to an iron pin corner; thence S 22 degrees - 57' W 456.9 feet to an iron pin corner; thence S 02 degrees - 07' E 261.1 feet to a nail and bottle top; thence S 38 degrees - 42' W 243.9 feet to a nail and bottle top located within the right of way for Highway S-439; thence S 32 degrees - 40' W 248.5 feet to a nail and bottle top located in the center of the right of way for Highway S-439; thence S 25 degrees - 27' W 240.3 feet to an iron pin corner; thence N 86 degrees 32' W 249.9 feet to an iron pin corner; thence S 86 degrees-19' W 593.3 feet to an iron pin corner; thence S 09 degrees - 16' W 241.6 feet to an iron pin corner; thence N 78 degrees - 56' W 673.4 feet to an iron pin corner; thence N 05 degrees - 25' W 398.7 feet to an iron pin corner; thence N 09 degrees - 32' E 798.4 feet to an iron pin corner; thence N 23 degrees - 02' W 365.0 feet to an iron pin corner; thence N 75 degrees - 09' E 132.3 feet to an iron pin corner; thence N 24 degrees - 28' E 796.4 feet to the POINT OF BEGINNING. Said tract of land is bounded on the North by the right of way for U.S. Highway 76 and 123, on the East by lands of various owners, on the South by lands now or formerly of Clemson University and U.S. Government Hartwell Reservoir and on the West by lands now or formerly of U.S. Government Hartwell Reservoir and Delta Corporation.

LESS AND EXCEPT all that certain piece, parcel or tract of land conveyed from Greenfield Industries, Inc., predecessor in interest of Grantor herein, by deed dated December 22, 2003, and recorded on December 31, 2003, in the Office of the Register of Deeds of Oconee County, South Carolina in Book 1302, page 345.

LESS AND EXCEPT all that certain piece, parcel or tract of land conveyed from Greenfield Industries, Inc., predecessor in interest of Grantor herein, by deed dated March 4, 1996 and recorded on April 10, 1996 in the Office of the Register of Deeds of Oconee County, South Carolina in Book 857, page 305.

BEING commonly referred to as 2501 Davis Creek Road, Seneca, Oconee County, South Carolina and as Tax Map/Parcel Numbers 226-00-04-006 and 226-00-04-020.

**EXHIBIT B
LAND DESCRIPTION
PICKENS COUNTY**



AGENDA ITEM SUMMARY
OCONEE COUNTY, SC

COUNCIL MEETING DATE: April 6, 2010
COUNCIL MEETING TIME: 7:00 PM

ITEM TITLE OR DESCRIPTION:

Second Reading: ORDINANCE 2010-02 – "AN ORDINANCE AMENDING CHAPTER 2, ARTICLE V OF THE OCONEE COUNTY CODE OF ORDINANCES PERTAINING TO THE PROCUREMENT POLICIES AND PROCEDURES OF OCONEE COUNTY; AND OTHER MATTERS RELATED THERETO".

BACKGROUND OR HISTORY:

The original Procurement Ordinance 85-2 was updated by Ordinance 2001-15 on December 4, 2001. Since that time there has only been one amendment ordinance 2002-12 which included only two changes. At this time, an updated Procurement Ordinance is submitted for approval. This new Ordinance follows a new format and addresses many issues that are standard in other South Carolina County Ordinances.

SPECIAL CONSIDERATIONS OR CONCERNS:

Ordinance will need three readings and a public hearing to be approved.

COMPLETE THIS PORTION FOR ALL PROCUREMENT REQUESTS:

Does this request follow Procurement Ordinance #2001-15 guidelines? Yes / No -- Not Applicable.

STAFF RECOMMENDATION:

Staff recommends that Ordinance 2010-02 be approved on the second reading.

FINANCIAL IMPACT:

None.

ATTACHMENTS

1. Ordinance 2010-02 and Exhibit A

Reviewed By/ Initials:

_____ County Attorney _____ Finance _____ Grants _____ Procurement

Submitted or Prepared By:


Department Head/Elected Official

Approved for Submittal to Council:


Gene Klugh, Interim County Administrator

Council has directed that they receive their agenda packages a week prior to each Council meeting, therefore, Agenda Items Summaries must be submitted to the Administrator for his review/approval no later than 12 days prior to each Council meeting. It is the Department Head / Elected Officials responsibility to ensure that all approvals are obtained prior to submission to the Administrator for inclusion on an agenda.

A calendar with due dates marked may be obtained from the Clerk to Council.



**STATE OF SOUTH CAROLINA
COUNTY OF OCONEE
ORDINANCE 2010-02**

**AN ORDINANCE AMENDING CHAPTER 2, ARTICLE V OF THE OCONEE COUNTY
CODE OF ORDINANCES PERTAINING TO THE PROCUREMENT POLICIES AND
PROCEDURES OF OCONEE COUNTY; AND OTHER MATTERS RELATED THERETO**

WHEREAS, Oconee County, South Carolina (the "County"), a body politic and corporate and a political subdivision of the State of South Carolina, acting by and through the Oconee County Council (the "County Council"), has previously adopted certain ordinances and regulations regarding procurement, all of which are codified in Chapter 2, Article V of the Code of Ordinances, Oconee County, South Carolina (the "Code of Ordinances"); and,

WHEREAS, the South Carolina General Assembly has delegated the responsibility to political subdivisions of South Carolina, including the County, to adopt ordinances and promulgate procedures embodying sound principles of appropriately competitive procurement; and,

WHEREAS, the County Council recognizes that the primary concern of county government is the effective provision of services to the citizens of the County in a competitive, efficient and economical way; and,

WHEREAS, the County Council intends for all purchases of goods and services needed to provide these governmental services in the County be conducted with primary concern for the efficient and economical use of revenues provided by the citizens of the County; and,

WHEREAS, the County Council desires to update, amend and revise the centralized procurement practices and processes of the County, to provide a clear and comprehensive ordinance governing procurement by this County; to promote increased public confidence in the procurement regulations, procedures, and practices used by this County; to maximize the purchasing value of public funds; to foster real and effective broad-based competition for public procurement within the free enterprise system; to provide safeguards for maintaining a procurement system of quality and integrity; and to permit the continued development of procurement regulations, procedures, and practices that support user needs,

WHEREAS, the County Council therefore intends to repeal and replace all sections in Chapter 2, Article V of the Code of Ordinances:

NOW, THEREFORE, be it ordained by County Council, in meeting duly assembled that:

1. Chapter 2, Article V of the Code of Ordinances, Oconee County, South Carolina, entitled *Finance*, is hereby repealed in its entirety, is renamed *Procurement*, and is replaced as set forth in **Exhibit A**, which is attached hereto and hereby incorporated by reference as fully as if set forth verbatim herein.
2. All sections and divisions of Chapter 2, Article V of the Code of Ordinances that are not specifically replaced by and through Exhibit A are hereby repealed, revoked, and rescinded.
3. The remaining terms and provisions of the Code of Ordinances not revised or affected hereby remain in full force and effect.
4. Should any word, phrase clause or provision of this Ordinance be declared invalid or unconstitutional by a court of competent jurisdiction, such determination shall not effect this Ordinance as a whole, or any part hereof, except that specific provision declared by such court to be invalid or unconstitutional. If any part of this Ordinance is declared invalid, the remainder of the Ordinance shall not be affected and shall remain in force.
5. This Ordinance shall take effect and be in full force and effect from and after third reading and enactment by County Council.

ORDAINED in meeting, duly assembled, this ____ day of _____, 2010..

OCONEE COUNTY, SOUTH CAROLINA

(SEAL)

By: _____
Reginald T. Dexter, Chairman, County Council
Oconee County, South Carolina

ATTEST:

By: _____
Elizabeth G. Hulse, Clerk to County Council
Oconee County, South Carolina

First Reading [in title only]: January 19, 2010
Second Reading: April 6, 2010
Public Hearing:
Third Reading:

ORDINANCE 2010-02
Exhibit A

ARTICLE V. PROCUREMENT.

SECTION 2-421. Application.

(a) **General Application.** This Article applies to contracts for the procurement of property, supplies, services, and construction entered into by the County after the effective date of Oconee County Ordinance 2010-02, unless the parties agree to its application to contracts entered into prior to the effective date.

(b) **Application to County Procurement.** This Article shall apply to every expenditure of funds by the County for the purpose of procuring property, supplies, services, and construction services for the County irrespective of the source of funds. It shall also apply to the disposal of County equipment and supplies.

(c) **Application to State or Federal Fund Procurements.** Where a procurement involves funds provided by the State of South Carolina or the United States of America, that procurement shall be in compliance with such State or Federal laws and authorized regulations as are mandatorily applicable. However, in every instance where the provisions of this Article are more restrictive than State or Federal laws or authorized regulations, the provisions of this Article shall be followed.

SECTION 2-422. Definitions.

Architect-Engineer and Land Surveying Services. Those professional services associated with the practice of architecture, professional engineering, land surveying, landscape architecture and interior design pertaining to construction, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform, including but not limited to studies, investigations, surveys, evaluations, consultations, planning, programming conceptual designs, plans and specifications, cost estimates, inspections, shop drawing reviews, sample recommendations, preparation of operating and maintenance manuals and other related services.

Bidder. A business who has submitted a bid in response to an invitation for bids.

Business. Any corporation, partnership, sole proprietorship, firm, enterprise, company, franchise, association, organization, self-employed individual, or any other private legal entity.

Change Order. An agreed-upon written order to a Contractor executed by the Procurement Director and the Contractor after or in conjunction with execution of the base contract, directing a change in the work which may include a change in the contract price, the time for the Contractor's performance, or any combination thereof.

Construction. The process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings or real property.

Construction Management Services, Design-Build Services, or Turnkey Management Services. Approaches to construction contract management that allow for the selection of a single business to perform and manage the complete design and construction of a project.

Contract. All types of County agreements, regardless of how they may be styled, for the procurement or disposal of property, supplies, services, or construction.

Contract Modification. Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

Contractor. Any business having a contract with the County.

Cooperative Procurement. Procurement conducted by, or on behalf of, more than one Public Procurement Unit.

Cost Reimbursement Contract (also known as a Cost Plus-a-Percentage Contract) A contract that reimburses the contractor for all incurred costs which are allowable and allocable under the terms of the contract and may include a profit or fee.

ORDINANCE 2010-02
Exhibit A

Days. Calendar days. In computing any period of time prescribed by this Article or the ensuing regulations, or by any order or determination of the Procurement Director or of the Procurement Appeals Board, the day of the event from which the designated period of time begins to run is not included. If the final day of the designated period falls on a Saturday, Sunday, or a legal holiday for the County, then the period shall run to the end of the next business day.

Duly Certified Disadvantaged Business Enterprises (DBE), Small Business Enterprises (SBE), Minority Business Enterprises (MBE), and Women's Business Enterprises (WBE) are businesses which have obtained a certification as a DBE, SBE, MBE or WBE from the State or Federal Government, including, but not limited to certification as an MBE by the Governor's Office of Small and Minority Business Assistance.

Excess Supplies. Any supplies which are no longer required by the using County department in possession of the supplies or which no longer have a remaining useful life.

Expendable Supplies. Supplies or equipment that are normally consumed during use and have a very short life cycle.

Governmental Body. Oconee County or any department or agency of this County with which a public official or public employee is associated or employed.

Invitation to Bid. A written or published solicitation issued by the Procurement Director for bids to contract for the procurement or disposal of stated property, supplies, services, or construction, which will ordinarily result in the award of the contract to the responsible bidder making the lowest responsive bid.

Nonexpendable Supplies. Supplies that are not consumed during use or that do not lose their identity during use.

Offeror. A business who has submitted an offer in response to a request for proposals.

Person. One human being acting individually or on behalf of a business, an estate, a committee, an association, a club, or any other organization or group of persons acting in concert.

Personal Property. All supplies not considered as real property.

Professional services. Those services which involve extended analysis, the exercise of discretion and independent judgment in their performance, and an advanced, specialized type of knowledge, expertise, or training customarily acquired either by a prolonged course of study or equivalent experience in the field, including, without limitation, accountants, paralegals, architects, clergy, surveyors, consultants, court reporters, dentists, physicians, and nurses.

Procurement. The buying, renting, leasing, or otherwise acquiring of any property, supplies, services, or construction services. It also includes all functions that pertain to the obtaining of any property, supply, service, or construction, including description of requirements, selection, and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

Public Agency. A public entity subject to or created by the County.

Public Procurement Unit. Any county, city, town, or other subdivision of the State or public agencies of any such subdivision, public authority, educational, health, or other institution, any other entity which expends public funds for procurement of property, supplies, services, or construction, any association which limits membership to governmental units.

Procurement Director. The head of the Central Procurement Department of the County.

Real Property. Any land, all things growing on or attached thereto, and all improvements made thereto including buildings and structures located thereon.

Request for Proposals. A written or published solicitation issued by the County for proposals to provide property, supplies, services, or construction services which ordinarily result in the award of the contract to the responsible bidder making the proposal determined to be most advantageous to the County. The award of the contract must be made on the basis of evaluation factors which must be stated in the Request for Proposals, and may include, but not be controlled alone by, the factor of price proposed to be charged.

ORDINANCE 2010-02
Exhibit A

Responsible Bidder or Offeror. A business who has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit which will assure good faith performance.

Responsive Bidder or Offeror. A business who has submitted a bid or offer which conforms in all material respects to the requirements set forth in the invitation for bids or request for proposals.

Service(s). The furnishing of labor, time, or effort by a contractor not required to deliver specific end product, other than reports which are merely incidental to required performance. This term does not include employment agreements.

Subcontractor. Any business having a contract to perform work or render service to a prime contractor as a part of the prime contractor's agreement with the County.

Specification. Any description of the physical or functional characteristics of a property, supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a property, supply, service, or construction item for delivery.

Supplies. All personal property, including but not limited to equipment, materials, printing, insurance, excluding real property or an interest in real property.

Surplus Supplies or Property. Any supplies or property that are no longer needed by the County and are designated for disposal outside of the County. This includes obsolete supplies and/or property, scrap materials, and nonexpendable supplies that have completed their useful life cycle. (See Section 2-445)

Using Department. Any department, commission, board, or public agency of this County requiring supplies, services, or construction procured under this Article.

SECTION 2-423. Procurement Organization.

(a)**Centralization of Procurement.** All rights, powers, duties, and authority relating to the purchase of equipment, supplies, and services and to the management, control, warehousing, sale, and disposal of property, equipment and surplus supplies are hereby vested in a central Procurement Department for the County subject to the legitimate authority of the County Council, the County Administrator and such ordinances, rules, and regulations as exist for the governance of the County.

(b)**Centralization of Procurement Authority.** Except as otherwise provided in this Article, the authority relating to the procurement of property, supplies, services, and construction is hereby vested in the Procurement Director of this County.

(c)**Establishment, Appointment, and Tenure.** There is hereby created the position of Procurement Director, who shall be the County's principal public procurement official. The County Administrator shall appoint the Procurement Director. The Procurement Director shall be employed with regard to his/her professional qualifications in public procurement and level of education. The Procurement Director shall be a full-time public employee of the County, and subject to the Oconee County Personnel Rules.

(d)**Authority and Duties.** Except as otherwise provided herein, the Procurement Director shall serve as the principal public procurement official of the County, and shall be responsible for the procurement of supplies, services, and construction in accordance with this Article, as well as the disposal of Surplus Supplies and Property. In accordance with this Article, the Procurement Director shall: (a) procure or supervise the procurement of all property, supplies, services, and construction services needed by the County; (b) sell, trade, or otherwise dispose of Surplus Supplies and Property belonging to the County; (c) establish and maintain programs for specifications development, contract administration and inspection and acceptance, in cooperation with the using department, for property, supplies, services, and/or construction services.

(e)**Delegation of Authority.** The Procurement Director may delegate authority to purchase certain property, supplies, services, and construction to other County officials or designees of the Procurement Department, if such delegation is deemed necessary for the effective procurement of those items, but only in accordance with the other terms and provisions of this Article.

ORDINANCE 2010-02

Exhibit A

(f) **Authority to Promulgate Regulations.** Except as otherwise provided in this Article, the Procurement Director shall have the authority and responsibility to promulgate regulations governing the procurement, management, control, and disposal of any and all property, supplies, services, and/or construction to be procured by the County. A manual of Procurement Regulations and Procedures shall be developed and maintained by the Procurement Director. All regulations and procedures shall be in keeping with the letter and intent of this Article.

(g) **Relationship With Using Departments.** The Procurement Director and his/her staff shall maintain a close and cooperative relationship with the using departments. Each using department shall be afforded reasonable opportunity to participate in and make recommendations with respect to procurement matters affecting the using department.

(h) **Advisory Groups.** The Procurement Director may appoint advisory groups to assist with respect to specifications and procurement in specific areas, and with respect to any other matters within the authority of the Procurement Director. These groups could include department heads, vendors, and others as deemed necessary. Such groups shall, to the extent required by law, comply with all South Carolina laws applicable to such groups.

SECTION 2-424. Procurement Records.

(a) **Retention of Procurement Records.** All determinations and other written records pertaining to the solicitation and award of an Invitation to Bid, a Request for Proposals, or any other solicitation made under this Article, and findings required by this Article shall be maintained in a file by the Procurement Director. This requirement does not include documents, parts of documents, or copies of documents that are normally distributed to using departments, the Finance Department, or any other department that normally receives such distributions. All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the County. If a contract is being funded in whole or in part by assistance from a Federal agency, then all procurement records pertaining to that contract shall be maintained for three (3) years from the closeout date of the assistance agreement, or the final disposition of any controversy arising out of the assistance agreement.

(b) **Public Access to Procurement Information.** Procurement information shall be a public record to the extent required by the South Carolina Freedom Of Information Act ("SCFOIA") as set forth in Chapter 4 of Title 30, of the South Carolina Code of Laws, 1976, as amended. Except as required by law or court order, commercial or financial information which an offeror or bidder seeks to protect from disclosure (hereinafter "Proprietary Information" in this subsection) will not be disclosed after the award provided the offeror or bidder clearly marks any information the offeror or bidder considers to contain Proprietary Information as "CONFIDENTIAL" on each part of the proposal documents by page, paragraph, section or line, as appropriate. Proprietary Information includes information that, if disclosed, might cause harm to the competitive position of the offeror or bidder supplying the information. Additionally, the offeror or bidder seeking to exempt information from disclosure under SCFOIA shall be solely responsible for identifying information as exempt from disclosure under SCFOIA and for visibly marking each specific document or part of a document which the offeror or bidder deems to be so exempt as "EXEMPT FROM S.C. FREEDOM OF INFORMATION ACT." If any part of a proposal is designated as exempt from SCFOIA, there must be attached to that part an explanation of how this information fits within one or more categories exempt from disclosure under SCFOIA. The County shall reserve the right to determine, in its sole discretion, whether this information, including marked items, meets SCFOIA requirements for non-disclosure or otherwise should be exempt from disclosure. The offeror or bidder shall be solely responsible for any consequences related to or arising from the nondisclosure of any information that is subsequently determined not exempt from disclosure under SCFOIA. The County will not assume responsibility for the disclosure of any information that is disclosed as a result of the offeror or bidder's failure to visibly mark as "CONFIDENTIAL" or "EXEMPT FROM S.C. FREEDOM OF INFORMATION ACT," and the County will not bear liability for disclosing Proprietary Information or other information that the County in good faith has determined to be subject to disclosure under applicable law or court order. The County shall disclaim any responsibility for not disclosing information identified by an offeror or bidder as exempt from SCFOIA.

ORDINANCE 2010-02
Exhibit A

SECTION 2-425. DBE/SBE/MBE/WBE Utilization

The County wishes to ensure that qualified and duly certified Disadvantaged Business Enterprises ("DBE"), Small Business Enterprises ("SBE"), Minority Business Enterprises ("MBE"), and Women's Business Enterprises ("WBE") are afforded the opportunity to fully participate in the overall procurement process of the County. In addition to any requirements set forth in state or federal mandates, the Procurement Director shall include qualified DBE's, SBE's, MBE's, and WBE's on solicitation lists; when economically feasible, divide total requirements into small tasks or quantities to permit maximum participation of DBE's, SBE's, MBE's, and WBE's; and solicit qualified DBE's, SBE's, MBE's, and WBE's who are on the solicitation lists when they are potential sources for supplies, services, or construction.

SECTION 2-426. Specific State and Federal Law Requirements.

(a) **Drug-free Workplace Act.** The County shall require offerors and bidders responding to any written or published solicitation issued by the County to certify in writing that the offeror or bidder is in full compliance with the requirements of the Drug-free Workplace Act as set forth in Chapter 107 of Title 44 of the South Carolina Code of Laws, 1976, as amended.

(b) **Unauthorized Aliens and Public Employment.** The County shall require offerors and bidders responding to any written or published solicitation issued by the County to certify in writing that the offeror or bidder is in full compliance with the requirements set forth in Chapter 14 of Title 8 of the South Carolina Code of Laws, 1976, as amended, and specifically that the offeror or bidder agrees to provide to the public employer any documentation required to establish either: (a) Chapter 14 of Title 8 of the South Carolina Code of Laws, 1976, as amended, is inapplicable to the offeror or bidder or any subcontractor or sub-subcontractor of the offeror or bidder; or (b) the offeror or bidder and any subcontractor or sub-subcontractor of the offeror or bidder is in full compliance with Chapter 14 of Title 8 of the South Carolina Code of Laws, 1976, as amended. The offeror or bidder shall also certify that the offeror or bidder will, and at all times during the performance of work provided to the County, be in full compliance with the provisions of the Immigration Reform and Control Act of 1986 (IRCA) in the hiring of its employees, and the offeror or bidder shall indemnify, hold harmless and defend the County against any and all actions, proceedings, penalties or claims arising out of the offeror or bidder's failure to comply strictly with IRCA or Chapter 14 of Title 8 of the South Carolina Code of Laws, 1976, as amended.

(c) **Compliance with Federal Requirements; Compliance with Disbursement and Management Requirements of Financing Documents.** Where a procurement involves the expenditure of Federal assistance or contract funds, the Procurement Director shall comply with such Federal law and authorized regulations which are mandatorily applicable, and which are not presently reflected in this Article. Where a procurement involves the expenditure of funds, which are the proceeds of bonds or certificates of participation, or other financing instruments or documents, the Procurement Director and other applicable County personnel shall comply with the terms of such financing as they relate to the disbursement of funds and management of projects, insofar as such terms are mandatorily applicable and which are not presently reflected in this Article.

SECTION 2-427. Standards of Conduct and Ethics in Public Contracting.

In all actions involving the procurement of property, supplies, services, or construction for the County, the provisions of Chapter 13 of Title 8 of the South Carolina Code of Laws, 1976, as amended, (the "State Ethics Act"), shall be complied with. It shall be unethical for a person or business to be retained, or to retain a person or business, to solicit or secure a County contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

SECTION 2-428. Exemptions.

(a) **Governmental Body and Funding Exemptions.** Contracts approved by ordinance, resolution, or other specific action of the County Council are exempt from the provisions of this Article. County Council may exempt by resolution specific items, services, or projects from the purchasing procedures required in this Article, and County Council shall retain the authority to establish by ordinance, or approve by resolution, a method of source

ORDINANCE 2010-02

Exhibit A

selection other than those specified in this Article. The purchase and disposal of published books, periodicals, technical pamphlets, and other such materials by the Oconee County Public Library System are exempt from the provisions of this Article. However, the Oconee County Public Library Board of Trustees shall submit procedures for the purchase and disposal of such items to County Council for approval and shall abide by the procedures approved by County Council. If the County lawfully provides funds for the provision of public services, public improvements or public infrastructure in connection with a private project, where the work for the project, including without limitation, the design, acquisition, construction or installation of improvements or infrastructure (including the public improvements or infrastructure) is to be performed by a private business or its agent, such a project shall be exempt from this Article and the private business need not procure the services and the supplies associated with such a project as specified in this Article.

(b) **Supply/Service Exemptions.** The following supplies and services are exempt from this Article and need not be purchased through the standard procurement process: (1) Works of art and one-of-a-kind items, such as paintings, antiques, sculptures and similar objects; (2) Published books, maps, periodicals, technical pamphlets, and other such materials; (3) Membership fees, professional dues, registration fees; (4) Postage stamps and fees; (5) Utility Services; (6) Advertising time or space in newspapers, radio, television, professional journals or publications; (7) Professional training; (8) The purchase of goods, products, and services from the South Carolina Department of Corrections, Division of Prison Industries; (9) Attorneys and legal services; (10) License agreements for computer software, after such software has been purchased subject to the provisions of this Article; (11) The procurement of copyrighted educational films, filmstrips, slides and transparencies, CD-ROM documents, databases, computer assisted instructional materials, video programs and other related materials.

(c) **Other Exemptions.** Procurements obtained under any of the following methods are exempt from Invitation to Bid/Request for Proposals procedures listed in this Article: (1) Sole Source procurement (see Section 2-434); (2) Emergency procurements (see Section 2-435); (3) Equipment Maintenance or service contracts which are made with the manufacturer or authorized service/agent. This also includes additional purchases of equipment to replace or upgrade part of a system that is covered under a maintenance agreement; (4) Repairs to equipment performed by an authorized dealer including repair parts that may only be obtained from an authorized dealer; (5) Equipment or services purchased through South Carolina State Contracts, South Carolina State or Federal Surplus Property or from Invitations to Bid/Requests for Proposals issued by other governmental agencies or political subdivisions and other cooperative purchases under Section 2-444; (6) Used Equipment – When County staff have inspected used equipment and found it to be in good condition and competitively/fairly priced and when "time is of the essence" to secure said equipment, the Procurement Director or the County Administrator have authority to approve this type of purchase; and (7) Existing bid or contract – the acquisition of supplies, services or construction previously contracted for. Although the items listed in this section are exempt from the normal procurement procedures of this Article, every effort should be made to ensure that the procurement made and/or contract negotiated is cost effective and is in the best interest of the County.

SECTION 2-429. Methods of Source Selection.

Unless otherwise required by law, all County contracts amounting to Fifty Thousand Dollars (\$50,000.00) or more shall be awarded by competitive sealed bidding, pursuant to Section 2-430 (Competitive Sealed Bidding), except as provided in: (1) Section 2-428(b) (Supply Service Exemptions); (2) Section 2-428(c) (Other Exemptions); (3) Section 3-430(m) (Negotiations After Unsuccessful Competitive Sealed Bidding); (4) Section 2-431 (Competitive Sealed Proposals); (5) Section 2-432 (Purchasing Limits); (6) Section 2-434 (Sole Source Procurement); (7) Section 2-435 (Emergency Procurements); (8) Section 2-446 (Real Property); (9) Section 2-436 (Professional Services); (10) Section 2-442 (Construction Contracting). County Council shall retain the authority to establish or approve a method of source selection other than those specified in this Section.

SECTION 2-430. Competitive Sealed Bidding.

(a) **Conditions for Use.** Contracts amounting to Fifty Thousand Dollars (\$50,000.00) or more shall be awarded by competitive sealed bidding except as otherwise provided in Section 2-429 (Methods of Source Selection).

ORDINANCE 2010-02
Exhibit A

(b) **Invitation to Bid.** An Invitation to Bid shall be issued in an efficient and economical manner to at least three qualified sources on the bidders' lists appropriate for the particular procurement, and shall include specifications and all contractual terms and conditions applicable to the procurement. If three qualified sources are not available, invitations to bid shall be issued to such qualified sources as are available.

(c) **Bidders' Lists.**

i. All sources requesting to be put on a bidders' list shall be so enlisted, unless the Procurement Director makes a written determination that the source should not be enlisted in accordance with regulations.

ii. The Procurement Director shall ensure that the bidders' lists contain all identified sources interested in bidding on County procurement. The Procurement Director shall periodically review the bidders' lists and shall require the addition or deletion to such lists of sources contained therein, as deemed necessary.

(d) **Public Notice.** Adequate public notice of the Invitation to Bid shall be given for a reasonable time, not less than seven calendar days prior to the date set forth therein for the opening of bids. Such notice may include publication in a newspaper of general circulation a reasonable time prior to bid opening. The public notice shall state the place, date, and time of bid opening.

(e) **Receipt and Safeguarding of Bids.** All bids (including modifications) received prior to the time of opening shall be kept secure and unopened in a locked cabinet or safe.

(f) **Bid Opening.** Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Invitation to Bid. The amount of each bid, and such other relevant information as the Procurement Director deems appropriate, together with the name of each bidder shall be recorded. Late bids shall not be opened and considered for award, but the name of the late Bidder(s) and the time of the attempted delivery shall be recorded in the bid file, wherever possible. The record (tabulation) and each bid shall be open to public inspection after award of bid in accordance with Section 2-424. The Procurement Director may record the bid opening.

(g) **Bid Acceptance and Bid Evaluation.** Bids shall be unconditionally accepted without alteration or correction, except as authorized by this Article. Bids shall be evaluated based on the requirements set forth in the Invitation to Bid, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. The Invitations to Bid shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the Invitation to Bid.

(h) **Discussion with Bidders.** As provided in the Invitation to Bid, discussions may be conducted with apparent responsive bidders for the purpose of clarification if in the Procurement Director's sole judgment such clarification is necessary and beneficial to the County. Clarification of any bidder's bid must be documented in writing by the Procurement Director and shall be included with the bid file.

(i) **Correction or Withdrawal of Bids; Cancellation of Awards.** Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such mistakes, may be permitted subject to the following: appropriate mistakes discovered by the bidder before bid opening may be modified or withdrawn by submitting written notice to the Procurement Department prior to the time set for bid opening. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the County shall be permitted. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards, or contracts, after award but prior to performance shall be supported by a written determination made by the Procurement Director.

(j) **Tie Bids.** If two or more bidders are tied in price, while otherwise meeting all of the required terms and conditions of the bid, awards may be determined as follows:

i. If there is an in-county business (active business or warehousing facility located within Oconee County) tied with an out-of-county business, the award will go to the in-county business.

ii. If there is an in-state business (active business or warehousing facility located within South Carolina) tied with an out-of-state business, the award will go to the in-state business.

iii. Tie bids involving in-County and in-State firms may be resolved by the flip of a coin in the office of the Procurement Director witnessed by all interested parties.

ORDINANCE 2010-02
Exhibit A

(k) **Award.** The contract shall be awarded with reasonable promptness by appropriate written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation to Bid. The Procurement Director shall approve the award of contracts up to Twenty Five Thousand Dollars (\$25,000.00) after receiving an acceptable recommendation of award from the using department. The County Administrator shall approve the award of contracts over Twenty Five Thousand Dollars (\$25,000.00), but less than Fifty Thousand Dollars (\$50,000.00) after receiving an acceptable recommendation of award from the Procurement Director or using department. Awards of contracts over Fifty Thousand Dollars (\$50,000.00) shall be approved by resolution of County Council.

(l) **Minor Informalities and Irregularities in Bids.** A minor informality or irregularity is one which is merely a form or is some immaterial variation from the exact requirements of the Invitation to Bid having no effect or merely a trivial or negligible effect on total bid price, quality, quantity, or delivery of the supplies or performance of the contract, and the correction or waiver of which would not affect the relative standing of, or be otherwise prejudicial to, bidders. The Procurement Director shall either give the bidder the opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive any such deficiency when it is to the advantage of the County. Such communication or determination shall be in writing. Examples of minor informalities or irregularities may, in the County's sole discretion, include, but are not limited to:

- i. failure of a bidder to return the number of copies of signed bids required by the solicitation;
- ii. failure of a bidder to furnish the required information concerning the number of the bidder's employees or failure to make a representation concerning its size;
- iii. failure of a bidder to acknowledge receipt of an amendment to a solicitation, when required, but only if the amendment has no effect or merely a trivial or negligible effect on price, quality, quantity, delivery, or relative standing of bidders;
- iv. failure of a bidder to furnish product literature;
- v. failure of a bidder to furnish financial statements;
- vi. failure of a bidder to indicate a bid number on its submission envelope;
- vii. failure of a bidder to indicate his/her contractor's license number.

(m) **Negotiations After Unsuccessful Competitive Sealed Bidding.** When bids received pursuant to an Invitation to Bid are unreasonable or the low bid exceeds available funds as certified by the Finance Director, and it is determined in writing by the Procurement Director that time or other circumstances will not permit the delay required to re-solicit competitive sealed bids, a contract may be negotiated pursuant to this section, provided that: (1) each responsive/responsible bidder, who submitted a bid under the original solicitation, is notified of the determination and is given reasonable opportunity to negotiate, (2) the negotiated price is lower than the lowest rejected bid by any responsive/responsible bidder under the original solicitation; (3) the negotiated price is the lowest negotiated price offered by any responsive/responsible bidder.

(n) **Cost of Bids.** Under no circumstances will the County be liable for any costs associated with any response to solicitations made under this Article. The bidder shall bear all costs associated with the preparation of responses to solicitations made under this Article.

(o) **Rejection or Acceptance of Bids; Waiver of Technicalities and Irregularities.** The County shall reserve the unqualified right to reject any and all bids or accept such bids, as appears in the County's own best interest. The County shall reserve the unqualified right to waive technicalities or irregularities of any kind in solicitations made under this Article. In all cases, the County shall be the sole judge as to whether a bidder's bid has or has not satisfactorily met the requirements to solicitations made under this Article.

SECTION 2-431. Competitive Sealed Proposals / Request for Proposals.

(a) **Conditions for Use.** When the Procurement Director determines, in writing, with explanation of the reason(s), that the use of competitive sealed bidding is either not practicable or not advantageous to the County, a contract may be entered into by use of the competitive sealed proposals method.

ORDINANCE 2010-02
Exhibit A

(b) **Request for Proposals.** Proposals shall be solicited from at least three qualified sources, when such sources are available, through a Request for Proposals.

(c) **Public Notice.** Adequate public notice of the Request for Proposals shall be given in the same manner as provided in Section 2-430(d) (Competitive Sealed Bidding, Public Notice); provided the minimum notice period shall be fifteen (15) calendar days.

(d) **Receipt of Proposals.** No proposals shall be handled so as to permit disclosure of the contents of any proposal to competing offerors during the process of negotiation. A register of proposals shall be prepared containing the name of the offeror, the number of modifications received, if any, and a description sufficient to identify the item/service offered. The register of proposals shall be open for public inspection only after contract award.

(e) **Proposal Opening.** Proposals shall be publicly opened and only the names of the offerors disclosed at the proposal opening. Contents of competing proposals shall not be disclosed during the process of negotiation. Proposals shall be open for public inspection, in accordance with Section 2-424, after contract award. Late proposals shall neither be opened nor considered for award; however, the name and address of the late offeror and the time of attempted delivery shall be recorded wherever practicable.

(f) **Request for Qualifications.** Prior to soliciting proposals, the Procurement Director may issue a Request for Qualifications from prospective offerors. Such request shall contain at a minimum a description of goods or services to be solicited by the Request for Proposals and the general scope of the work and shall state the deadline for submission of information and how prospective offerors may apply for consideration. The request shall require information only on their qualifications, experience, and ability to perform the requirements of the contract. After receipt of the responses to the Request for Qualifications from prospective offerors, the prospective offerors shall be ranked from most qualified to least qualified on the basis of the information provided. Proposals shall then be solicited from at least the top three prospective offerors by means of a Request for Proposals. The failure of a prospective offeror to be selected to receive the Request for Proposals shall not be grounds for protest under Section 2-443.

(g) **Public Notice.** Adequate public notice of the Request for Qualifications shall be given in the manner provided in Section 2-430(d).

(h) **Evaluation Criteria.** The Request for Proposals shall state the criteria to be considered in evaluating proposals. Price may, but need not be, an initial evaluation criteria.

(i) **Discussion with Responsive/Responsible Offerors and Revisions to Proposals.** As provided in the Request for Proposals discussions may be conducted with responsible offerors who submit proposals determined to be eligible of being selected for award for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(j) **Selection and Ranking.** Proposals shall be evaluated using only the criteria stated in the Request for Proposals and there must be adherence to any weightings that have been previously assigned. Once evaluation is complete, all responsive offerors shall be ranked from most advantageous to least advantageous to the County, considering only the evaluation criteria stated in the Request for Proposals. If price is an initial evaluation criteria, award shall be made in accordance with Section 2-431(k). If price is not an initial evaluation factor, negotiations shall be conducted with the top ranked responsive offeror for performance of the contract at a price which is fair and reasonable to the County. Should the Procurement Director be unable to negotiate a contract at a price which is fair and reasonable to the County, negotiations shall be formally terminated with the top ranked responsive offeror and negotiations commenced with the second most advantageous responsive offeror, and then the third and so on until a satisfactory contract has been negotiated. In conducting negotiations, there must be no disclosure of any information derived from proposals submitted by competing offerors.

(k) **Award.** Award must be made to the responsible and responsive offeror whose proposal is determined in writing to be the most advantageous to the County, taking into consideration price and the evaluation criteria set forth in the Request for Proposals, unless one of the options listed in Section 2-431(l) is utilized. The contract file

ORDINANCE 2010-02

Exhibit A

shall contain the basis on which the award is made. Procedures and requirements for notification of intent to award the contract shall be the same as those stated in Section 2-430(k).

(l) **Other.** If, after following the procedures set forth in Section 2-431(j), a contract is not able to be negotiated, the scope of the Request for Proposals may be changed in an effort to reduce the cost to a fair and reasonable amount, and all responsive offerors must be allowed to submit their best and final offers. Where price was an initial evaluation factor, the using department, through the Procurement Director, may in his/her sole discretion, and not subject to challenge through a protest filed under Section 2-443, proceed in any of the following manners:

- i. negotiate price with the highest scoring offeror. If a satisfactory price cannot be agreed upon, price negotiations may be conducted with the second, and then the third, and so on, ranked offerors to such level of ranking as determined by the using department and/or the Procurement Director;
- ii. negotiate with the highest ranking offeror on matters affecting the scope of the contract, so long as the overall nature and intent of the contract is not changed. If a satisfactory contract cannot be negotiated with the highest ranking offeror, negotiations may be conducted with the second, and then the third, and so on, ranked offerors to such level of ranking as determined by the using department and/or the Procurement Director;
- iii. change the scope of the Request for Proposals and give all responsive/responsible offerors an opportunity to submit best and final offers.

If any of these options are chosen, and it is still not possible to award a contract, any of the procedures outlined herein may be repeated until a proposed contract is successfully achieved.

(m) **Minor Informalities and Irregularities in Proposals.** A minor informality or irregularity is one which is merely a form or is some immaterial variation from the exact requirements of the request for proposals having no effect or merely a trivial or negligible effect on total price, quality, quantity, or delivery of the supplies or performance of the contract, and the correction or waiver of which would not affect the relative standing of, or be otherwise prejudicial to offerors. The Procurement Director shall either give the offeror the opportunity to cure any deficiency resulting from a minor informality or irregularity in a proposal or waive any such deficiency when it is to the advantage of the County. Such communication or determination shall be in writing. Examples of minor informalities or irregularities may, in the County's sole discretion, include, but are not limited to:

- i. failure of a offeror to return the number of copies of signed proposals required by the solicitation;
- ii. failure of a offeror to furnish the required information concerning the number of the offeror's employees or failure to make a representation concerning its size;
- iii. failure of a offeror to acknowledge receipt of an amendment to a solicitation, when required, but only if the amendment has no effect or merely a trivial or negligible effect on price, quality, quantity, delivery, or relative standing of offerors;
- iv. failure of a offeror to furnish product literature;
- v. failure of a offeror to furnish financial statements;
- vi. failure of a offeror to indicate a bid number on its submission envelope;
- vii. failure of a offeror to indicate his/her contractor's license number.

(n) **Cost of Proposals.** Under no circumstances will the County be liable for any costs associated with any proposal. The offeror shall bear all costs associated with the preparation of proposals.

(o) **Rejection or Acceptance of Proposals; Waiver of Technicalities and Irregularities.** The County shall reserve the unqualified right to reject any and all proposals or accept such proposals, as appears in the County's own best interest. The County shall reserve the unqualified right to waive technicalities or irregularities of any kind in solicitations made under this Chapter. In all cases, the County shall be the sole judge as to whether a proposer's proposal has or has not satisfactorily met the requirements to solicitations made under this Chapter.

ORDINANCE 2010-02
Exhibit A

SECTION 2-432. Purchasing Limits.

(a) **General.** Any contract not exceeding Fifty Thousand Dollars (\$50,000.00) may be made in accordance with the procedures authorized in this Section. Procurement requirements shall not be artificially divided so as to fall within a different purchasing limit.

(b) **Purchases under Two Thousand Five Hundred Dollars (\$2,500.00).** Any purchase not exceeding Two Thousand Five Hundred Dollars (\$2,500.00) may be accomplished without securing competitive quotations if the prices are considered to be fair and reasonable. Competitive quotations need only be taken when the Procurement Director suspects the price may not be fair and reasonable (e.g., comparison to previous price paid, personal knowledge of the price range of the item involved). Every effort should be made to distribute such purchases equitably among qualified suppliers.

(c) **Purchases over Two Thousand Five Hundred Dollars (\$2,500.00) but not exceeding Ten Thousand Dollars (\$10,000.00).** Insofar as it is practical, solicitations of written quotes from a minimum of three qualified sources of supply shall be made by the requesting department and documentation of the quotes attached to the purchase requisition. The award shall be made to the lowest responsive/responsible source after all quotes are reviewed by the Procurement Department.

(d) **Purchases over Ten Thousand Dollars (\$10,000.00) but not exceeding Fifty Thousand Dollars (\$50,000.00).** Insofar as it is practical, solicitations of written quotes from a minimum of three qualified sources of supply shall be made by the Procurement Director. Quotes between Twenty Five Thousand Dollars (\$25,000) and Fifty Thousand Dollars (\$50,000.00) shall be advertised for a minimum of seven (7) calendar days electronically in the South Carolina Business Opportunities publication or other electronic methods. Documentation of the quotes shall be attached to the purchase requisition. The award shall be made to the lowest responsive/responsible source.

(e) **Procurement** reserves the authority to review any request made by a using department pursuant to this section.

(f) **Protest Rights.** The provisions of Section 2-443 shall not apply to contracts awarded under the procedures set forth in this Section.

SECTION 2-433. Purchasing Card Program.

(a) The procedures for this program shall be promulgated and amended as needed by the Procurement Director and the County Administrator.

(b) This program shall be discontinued at any time as recommended by the Procurement Director and the County Administrator.

(c) The Cardholder shall use the Purchasing Card for legitimate business purposes only. Misuse of the card will subject the cardholder to disciplinary action in accordance with County policies.

SECTION 2-434. Sole Source Procurement.

Any request by an agency or department head that a procurement be restricted to one potential source shall be accompanied by a letter from the using department signed by the department head stating why no other source will be suitable or acceptable to meet the needs. In such instance, a contract may be awarded for a property, supply, service, or construction item without competition when the Procurement Director determines in writing that there is only one source for the required property, supply, service, or construction item or that the proposed award to a single source is a permitted, non-competitive procurement as established herein. After verification of a sole source vendor, or the justification of a sole source purchase is warranted, the Procurement Director, has the authority to negotiate the price, terms, and conditions of the procurement. An example of a permissible, non-competitive procurement includes, but is not limited to where the Procurement Director and the Department Head have deemed the compatibility of equipment, accessories, services, systems, software or replacement parts is of paramount importance.

SECTION 2-435. Emergency Procurements.

Notwithstanding any other provision of this Article, the Procurement Director may make or authorize others to make emergency procurements of property, supplies, services, and/or construction when there exists a threat to public health, welfare, or safety under emergency conditions, provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination by the using department of the basis for the emergency and for the selection of the particular contractor shall be provided to the Procurement Department and included in the contract file.

SECTION 2-436. Professional Services.

(a) **Authority.** The Procurement Director may procure professional services on behalf of the using department and the County in accordance with the selection procedures specified in this Section.

(b) **Selection Procedure.**

i. **Conditions for Use.** Except as provided under Section 2-434 (Sole Source Procurement) or Section 2-435 (Emergency Procurements), professional services shall be procured in accordance with this Subsection.

ii. **Statement of Qualifications.** Businesses engaged in providing the designated types of professional services may submit statements of qualifications and expressions of interest in providing such professional services. A using department utilizing such professional services may specify a uniform format for statements of qualifications. Businesses may amend these statements at any time by filing a new statement.

iii. **Public Announcement and Form of Request for Proposals.** Adequate notice of the need for such services shall be given by the using department requiring the services through a Request for Proposals, which will be provided, at a minimum, to all businesses which have submitted statements of qualification and expressions of interest. The Request for Proposals shall describe the services required, list the types of information and data required of each offeror, and state the relative importance of particular qualifications.

iv. **Discussions.** The Procurement Director along with the head of the using department procuring the required professional services may conduct discussions with any offeror who has submitted a proposal to determine such offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.

v. **Award.** Award shall be made to the offeror determined in writing by the Procurement Director to be best qualified based on the evaluation factors set forth in the Request for Proposals, and based on negotiation of compensation determined to be fair and reasonable. If compensation cannot be agreed upon with the best qualified offeror, then negotiations will be formally terminated with the selected offeror. If proposals were submitted by one or more other offerors determined to be qualified, negotiations may be conducted with such other offeror or offerors, in the order of their respective qualification ranking, and the contract may be awarded to the offeror then ranked best qualified if the amount of compensation for that offeror is determined to be fair and reasonable.

vi. **Protest Rights.** The provisions of Section 2-443 shall not apply to contracts awarded under the procedures set forth in this Section.

(c) **Exceptions.** Professional Services as defined in this section that are estimated to not exceed Twenty Five Thousand Dollars (\$25,000.00) may be awarded by direct negotiation and selection, taking into account the following factors:

- i. the type of services required;
- ii. the proximity (location) of the professional providing the services;
- iii. the capability of the professional to produce the required service within a reasonable time;
- iv. past performance and

ORDINANCE 2010-02
Exhibit A

- v. the ability to meet the budget requirements.

SECTION 2-437. Cancellation of Invitations to Bid or Requests For Proposals.

An Invitation to Bid, a Request for Proposals, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or part when it is in the best interest of the County. Documentation supporting the reason(s) for cancellation or rejection shall be made a part of the solicitation file. Under no circumstances will the County be liable for any costs associated with any bid or proposal. The bidder or offeror shall bear all costs associated with the preparation of bids and proposals.

SECTION 2-438. Qualifications and Duties of Bidders and Offerors.

(a) Responsibility of Bidders and Offerors.

- i. **Determination of Responsibility.** Responsibility of the bidder or offeror shall be ascertained by the Procurement Director for each contract entered into by the County based upon full disclosure to the Procurement Director concerning capacity to meet the terms of the contracts and based upon past record of performance for similar contracts.
- ii. **Determination of Non-responsibility.** If a bidder or offeror who otherwise would have been awarded a contract is found non-responsible, a written determination of non-responsibility, setting forth the basis of the finding, shall be prepared by the Procurement Director. The unreasonable failure of a bidder or offeror to supply information promptly in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such bidder or offeror.

(b) Cost or Pricing Data.

- i. **Required Submissions Relating to the Award of Contracts.** A prospective contractor shall submit cost or pricing data when the contract is expected to exceed Fifty Thousand Dollars (\$50,000.00) and is to be awarded under Section 2-431 (Competitive Sealed Proposals), Section 2-434 (Sole Source Procurement), or Section 2-442(h) (Architect-Engineer and Land Surveying Services), Section 2-430 (Competitive Sealed Bids).
- ii. **Exceptions.** The submission of cost or pricing data relating to the award of a contract is not required when: (a) the contract price is based on adequate price competition; (b) the contract price is based on established catalogue price or market prices; (c) the contract price is set by law or regulation; or (d) it is determined in writing by the Procurement Director that the requirements of Section 2-438(b)i. may be waived, and the determination states the reasons for such waiver.
- iii. **Required Submissions Relating to Change Orders or Contract Modifications.** A contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustments to contracts awarded by Competitive Sealed Bidding, whether or not cost or pricing data were required in connection with the initial pricing of the contract.
- iv. **Price Adjustment Provision Required.** Any contract award, change order, or contract modification under which the submission and certification of cost or pricing data are required shall contain a provision stating that the price to the County, including profit or fee, shall be adjusted to exclude any significant sums by which the County finds that such price was increased because the contractor furnished cost or pricing data as submitted was inaccurate, incomplete, or not current as of the date agreed upon between the County and the contractor.
- v. **Certification Required.** A contractor, actual or prospective, required to submit cost or pricing data in accordance with this Section, shall certify that the cost or pricing data submitted was accurate, complete, and current as of a mutually specified date prior to the award of the contract or the pricing of the change order or contract modification.

(c) Change Orders. The Procurement Director shall have the authority to approve all change orders and contract modifications up to Twenty Five Thousand Dollars (\$25,000.00) and the County Administrator shall

ORDINANCE 2010-02

Exhibit A

approve all change orders over Twenty Five Thousand Dollars (\$25,000.00) but less than Fifty Thousand Dollars (\$50,000.00), as long as the total amount does not exceed the budgeted amount approved by County Council. Any change order over Fifty Thousand Dollars (\$50,000.00) or in excess of the budgeted amount must be approved by County Council.

(d) **Bid and Performance Bonds on Supply or Service Contracts.** All contracts for equipment, supplies, and services may require bid security and performance bonds at the discretion of the Procurement Director in consultation with the using department head. Bid security when required, shall be in an amount equal to at least five percent (5%) of the amount of the bid. Performance bonds, when required, will normally be equal to one hundred percent (100%) of the contract. A determination regarding bids received for equipment, supplies, and services without requiring bid security will be made by the Procurement Director in the same manner as provided for in Section 2-442(c). A cashier's/official bank check made payable to the County may be submitted in lieu of a bond, or a letter of credit under circumstances deemed acceptable by the Procurement Director and the County Attorney's office. Bonding requirements will be set forth in the solicitation.

SECTION 2-439. Types of Contracts.

(a) **Limitation on Contracts.** Subject to the limitations of this Section, any type of contract which will promote the best interest of the County may be used; except that the use of a cost reimbursement contract (cost-plus-a-percentage-of-cost contract) is prohibited.

(b) **Multi-Term Contracts.**

i. **Specified Period.** To the extent permitted by law, a contract for supplies or services may be entered into for a period of time not to exceed a total of five (5) years, provided the terms of the contract and the conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Extension beyond the five year total will be at the discretion of the County Administrator or as County Council may direct. Payment and performance obligations for succeeding fiscal periods shall be made subject to the availability and appropriation of funds therefore and shall not be subject to non-substitution provisions.

ii. **Determination Prior to Use.** Prior to the utilization of a multi-term contract, it shall be determined in writing by the using department: (a) that estimated requirements cover the period of the contract and are reasonably firm and continuing; and (b) that such a contract will serve the best interest of the County by encouraging effective competition or otherwise promoting economies in County procurement.

iii. **Cancellation Due to Unavailability and Non-Appropriation of Funds in Succeeding Fiscal Periods.** All multi-term contracts shall contain a clause stating that when funds are not appropriated to support continuation of performance in any subsequent fiscal period, the contract shall be cancelled. Such contracts shall also provide that the County is not subject to a non-substitution provision.

(c) **Leasing Contracts.**

i. **Lease/Purchase Agreements.** A lease/purchase financing agreement is a contract by which one party conveys property to another for a period of time in exchange for the payment of interest and a portion of principal on the purchase price of the property. The use of lease/purchase financing will be limited to those situations in which it is in the County's best interest to secure third party financing. Purchases made with lease purchase financing are made using the same purchasing guidelines as other purchases. User departments must submit requests to use lease/purchase financing to, and receive authorization from the Finance Department.

ii. **Rental of Equipment.** Equipment should only be rented to fill short-term equipment needs. This may include one-time, short-term needs or short-term needs that may be re-occurring in which the rental of equipment is more cost effective than ownership of the equipment.

iii. **Lease of Business Personal Property.** A business lease is a contract for the use of equipment or other supplies under which Title does not pass to the County unless there is a purchase option, where Title may pass to the County as some future time. A lease may be entered into provided: (a) that it is in

ORDINANCE 2010-02

Exhibit A

the best interests of the County. (b) all conditions for renewal and costs of termination are set forth in the lease, and (c) the lease shall be obtained using normal Procurement procedures.

iv. **Lease with Purchase Option.** A purchase option in a lease may be exercised only if the lease containing the purchase option was awarded under competitive bidding, or competitive sealed proposal, or the leased equipment is the only equipment that can meet the County's requirements, as determined in writing by the department head of the using department and the Procurement Director.

(d) **Maintenance Contracts.** All maintenance contracts and agreements must be procured by the Procurement Department. A requisition is required for all maintenance agreements regardless of the dollar amount. Whenever practical, the terms of maintenance contracts shall be resolved in connection with the original solicitation for the item or equipment, which is the subject of the maintenance contract. Maintenance contracts may be reviewed by the Procurement Director or the County Administrator for proper terms and conditions as well as fair pricing. Maintenance contracts may only be approved by the Procurement Director or the County Administrator. Renewals of existing contracts in excess of Fifty Thousand Dollars (\$50,000.00) that have already been funded by County Council in the Budget Ordinance may also be executed by the County Administrator. New contracts in excess of Fifty Thousand Dollars (\$50,000.00) where funds were not previously specifically authorized by County Council, or as the County Administrator otherwise deems necessary, must be awarded by County Council.

SECTION 2-440. Right to Inspect Business and Audit of Records.

(a) **Right to Inspect Business.** The County may, at reasonable times, inspect the part of the place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the County.

(b) **Auditing.**

i. **Audit of Cost or Pricing Data.** The County may, at reasonable times and places, audit the books and records of any business who has submitted cost or pricing data pursuant to Section 2-438(b) (Cost or Pricing Data) to the extent that such books and records relate to such cost or pricing data. Any business who receives a contract, change order, or contract modification for which cost or pricing data is required, shall maintain such books and records that relate to such cost or pricing data for three (3) years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.

ii. **Contract Audit.** The County shall be entitled to audit the books and records of a contractor or subcontractor under any negotiated contract or subcontract other than firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.

SECTION 2-441. Contract Terms and Specifications.

(a) **Maximum Practical Competition.** All specifications shall be drafted so as to assure cost effective procurement for the purposes intended and encourage competition in satisfying the County's needs, and shall not be unduly restrictive. Any use of characteristics that serve to limit competition shall be avoided. The policy enunciated in this Section applies to all specifications including but not limited to, those prepared for the County by architects, engineers, designers, draftsmen, and land surveyors.

(b) **Duties of the Procurement Director and the Using Departments.** The Procurement Director may prepare or review, issue, revise and maintain the specifications for property, supplies, services, and construction required by the County. The Procurement Director may obtain expert advice and assistance from personnel of the using departments or other advisory sources in the development of specifications and may delegate to a Using Department the authority to prepare its own specifications. Specifications for property, supplies, services, or construction items exempted in Section 2-428, may be prepared by the Using Department in accordance with the provisions of this Article.

ORDINANCE 2010-02
Exhibit A

(c) **Brand Name or Equal Specification.**

i. **Use.** Brand name or equal specifications may be used when the Using Department makes a written determination that one of the following exists: (a) no other design or performance specification or qualified products list is available; (b) time does not permit the preparation of another form of purchase description not including a brand name specification; (c) the nature of the product or the nature of the County's requirements makes use of a brand name or equal specifications suitable for the procurement; or (d) use of a brand name or equal specification is in the County's best interests.

ii. **Required Characteristics.** Unless the Procurement Director determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.

iii. **Nonrestrictive Use of Brand Name or Equal Specifications.** Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

(d) **Brand Name Only Specification.**

i. **Use.** Since use of a "brand name only" specification is restrictive of product competition, it may be used only when the using agency makes a written determination that only the identified brand name item or items will satisfy the County's needs and such determination is approved, in writing, by the Procurement Director.

ii. **Competition.** The Procurement Director shall seek to identify sources from which the designated brand name only item or items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement may be made under Section 2-434 (Sole Source Procurement).

(e) **Contract Clauses and Their Administration.**

Contract Clauses. All contracts for property, supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract consistent with this Article, and containing the mandatory provisions and language of this Article. The Procurement Director may also issue clauses appropriate for property, supply, service, or construction contracts, addressing at least the following subjects:

- (a) the unilateral right of the County to order, in writing, changes in the work within the scope of the contract;
- (b) the unilateral right of the County to order, in writing, temporary stoppage of the work or delaying performance that does not alter the scope of the contract;
- (c) variations occurring between estimated quantities of work in a contract and actual quantities;
- (d) defective pricing;
- (e) liquidated damages;
- (f) specified excuses for delay or non-performances;
- (g) termination of the contract for default;
- (h) termination of the contract in whole or in part for the convenience of the County;
- (i) suspension of work on a construction project ordered by the County; and
- (j) site conditions differing from those indicated in the contract, or ordinarily encountered, except that differing site condition clauses need not be included in a contract:
 - 1. when the contract is negotiated;

ORDINANCE 2010-02
Exhibit A

2. when the contract provides the site or design; or
 3. when the parties have otherwise agreed with respect to the risk of differing site conditions.
- ii. **Price Adjustment.** Adjustments in price resulting from the use of contract clauses required in Subsection 1 of this Section shall be computed in one or more of the following ways:
- (a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (b) by unit prices specified in the contract or subsequently agreed upon;
 - (c) by the cost attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;
 - (d) in such other manner as contracting parties may mutually agree; or
 - (e) in the absence of agreement by the parties, by unilateral determination by the County of the reasonable costs allocable, either directly or indirectly, to the events or situations under such clauses as accounted for in accordance with generally accepted accounting principles, and with adjustment of profit or fee, as appropriate, and subject to the provisions of Section 2-443.

A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of Section 2-438(b) (Cost or Pricing Data).

- iii. **Standard Clauses and Their Modification.** The Procurement Director may establish, after consultation with the County Attorney, standard contract clauses, consistent with this Article and containing the mandatory provisions and the language of this Article, for use in County contracts.

SECTION 2-442. Construction Contracts.

(a) **Responsibility for Selection of Methods of Construction Contracting Management.** The County Administrator, in consultation with the Procurement Director shall have discretion to select the appropriate method of construction contracting management for a particular project. In determining which method to use, the County Administrator shall consider the County's requirements, its resources, and the potential contractor's capabilities. The County Administrator shall execute, and include in the solicitation file a written statement setting forth the facts which led to the selection of a particular method of construction contracting management for each project.

(b) **Construction Management Services, Design-Build Services, Turnkey Management Services.** County Council finds that certain non-traditional means of public construction project management can be in the best interests of the County in certain circumstances. Therefore, the following methods may be employed under the following circumstances:

- i. The Procurement Director, with approval of the County Administrator, shall have the discretion to use construction management services, design-build services, or turnkey management services as alternatives for construction contracting administration. In exercising such discretion, the County Administrator shall consider the method which in the County Administrator's discretion is the most advantageous to the County and will result in the most timely, economical, and successful completion of the construction project. The determination of the method of source selection utilized shall be stated in writing and included as part of the solicitation file.
- ii. If the County Administrator determines that the use of construction management services, design-build services or turnkey management services is the most advantageous means of securing the construction contracting administration set forth in this section, and the amount of services to be secured thereby is anticipated to exceed Five Million Dollars (\$5,000,000.00), the selection of the method of construction contracting administration used by the County and set forth in this section shall be submitted for review to the County Council. Within fifteen (15) days after notice of such review, an interested party shall submit to the County Council written comments which set forth the position of the party with respect to the decision as to which construction contracting method to use. At the next

ORDINANCE 2010-02

Exhibit A

meeting of the County Council which shall not occur until after at least fifteen (15) days following notice of such review, those who submitted comments may address the County Council. Following the meeting of the County Council, if County Council does not reject the selection of this method, the construction contracting administration shall be secured in the manner set forth in this section.

- iii. The competitive sealed proposal method of construction contracting administration, using Requests for Proposals prepared in accordance with section 2-431, is the most advantageous to the County, and the County shall use the competitive sealed proposal method as set forth in Section 2-431 for the purposes of procuring construction management services, design build services, or turnkey management services or any other similar type of construction management contract. The County Administrator may retain outside consulting services to prepare such Requests for Proposals. The Request for Proposals for any of these services shall set forth the criteria which the County will be using to select the successful proposal.

(c) Bid Security.

- i. **Requirement for Bid Security.** Bid security shall be required for all competitive sealed bidding and competitive sealed proposals for construction contracts when the price is estimated by the Procurement Director to exceed Five Hundred Thousand Dollars (\$500,000.00). Bid security shall be a legitimate bid bond provided by a surety company authorized to do business in South Carolina, or the equivalent in cash, or otherwise supplied in the form satisfactory to the County (surety bond, certified check, cashiers' check or official money order). Nothing herein prevents the requirement of such bonds on any construction contracts when the circumstances warrant.
- ii. **Amount of Bid Security.** Bid security shall be in an amount equal to at least five percent (5%) of the amount of the bid or proposal and shall remain in place until completion of construction or posting of performance and payment bonds.
- iii. **Rejection of Bid for Noncompliance with Bid Security Requirements.** When the invitation to bid or request for proposal requires security, noncompliance requires that the bid be rejected (except that a bidder or offeror who fails to provide bid security in the proper amount or a bid bond with the proper rating shall be given one working day from bid opening to cure such deficiencies. If the bidder or offeror cannot cure these deficiencies within one working day of bid opening, his/her bid or proposal shall be rejected).
- iv. **Withdrawal of Bids or Proposals.** After the bids or proposals are opened, they shall be irrevocable for the period specified in the invitation to bid or request for proposal. If a bidder is permitted to withdraw its bid before bid opening pursuant to Section 2-430(i) (Competitive Sealed Bidding, Correction or Withdrawal of Bids, Cancellation of Awards) or if a offeror is permitted to withdraw his/her proposal prior to the opening of proposals, no action shall be had against the bidder or proposer on the bid security.

(d) Contract Performance and Payment Bonds.

- i. **When Required - Amounts.** When a construction contract is awarded in excess of Five Hundred Thousand Dollars (\$500,000.00) the following bonds or security shall be delivered to the County and shall become binding on the parties upon the execution of the contract: (a) a performance bond satisfactory to the County, executed by a surety company authorized to do business in this State or otherwise secured in a manner satisfactory to the County, in an amount equal to one-hundred percent (100%) of the price specified in the contract; and (b) a payment bond satisfactory to the County, executed by a surety company authorized to do business in this State or otherwise secured in a manner satisfactory to the County, for the protection of all businesses supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to one-hundred percent (100%) of the price specified in the contract.
- ii. **Reduction of Bond Amounts.** The County Administrator is authorized to reduce the amount of performance and payment bonds to fifty percent (50%) of the contract price for each bond, when it has been determined in writing such reduction is necessary or warranted and is in the best interests of the County to do so.

ORDINANCE 2010-02

Exhibit A

iii. **Authority to Require Additional Bonds.** Nothing in this subsection shall be construed to limit the authority of the County to require a performance bond or other security in addition to those bonds.

(e) **Bond Forms.** The Procurement Director shall promulgate by regulation the form of the bonds required by this Section.

(f) **Fiscal Responsibility.** In addition to the authorities and requirements set forth in Section 2-438(c), every contract modification, change order, or contract price adjustment under a construction contract with the County shall be subject to prior approval as set forth in Section 2-438(c) after receiving a report from the County Finance Director as to the effect of the contract modification, change order, or contract price adjustment on the total project budget or the total contract budget.

(g) **Architect, Engineer and Land Surveying Services and Methods of Selection.**

i. **Policy.** It is the policy of the County to announce publicly all requirements for architect-engineer, construction management, and land surveying services and to negotiate contracts for such services on the basis of demonstrated competence and qualification for the particular type of services required and at fair and reasonable prices.

ii. **On Call Professional Services.** A broad range of architect, engineer and land surveying services may be available through an on-call, as needed professional service contract. For illustration purposes, the following elements should be basic to this type of contractual agreement: (a) agreements may be multi-year, (b) agreements will establish hourly rates for each type of service and other charges, (c) agreements will not provide any guarantee of projects, nor identify any specific project to be assigned, (d) as specific projects are assigned, the County will execute a simple contract modification to add the project and to detail the project's specific scope and services to be provided, the agreed upon number of hours and the time frame for completion, and (e) if the Procurement Director is not satisfied with an architect, engineer and land surveying business's proposal to provide services, the Procurement Director may negotiate with another architect, engineer and land surveying business with an on-call agreement to pursue a more acceptable proposal for the project.

iii. In the procurement of architect-engineer and land surveying services, the Procurement Director shall publically request architect, engineer and land surveying businesses to submit a statement of qualifications and performance data. The request must include, but not be limited to, the project title, the general scope of work, a description of all professional services required, the submission deadline, and how interested businesses may apply for consideration.

iv. **Selection Process.** A selection committee composed of the Procurement Director, head of using department in need of the architect-engineer or land surveying services, and those determined to be qualified to make an informed decision as to the most competent and qualified business for the proposed project, shall conduct interviews with at least three (3) businesses deemed most qualified to provide the required services on the basis of information available before the interviews. The selection committee shall evaluate each of the businesses interviewed in view of their:

- (a) past performance;
- (b) the ability of professional personnel;
- (c) demonstrated ability to meet time and budget requirements;
- (d) location and knowledge of the locality of the project if the application of this criterion leaves an appropriate number of qualified firms, given the nature and size of the project;
- (e) recent, current, and projected workloads of the business;
- (f) creativity and insight related to the project;
- (g) related experience on similar projects;
- (h) volume of work awarded by the using department to the business during the previous five years, with the objective of effectuating an equitable distribution of contracts by the County among qualified architect, engineer and land surveying businesses including

ORDINANCE 2010-02

Exhibit A

Disadvantaged Business Enterprises, Small Business Enterprises, Minority Business Enterprises, and Women's Business Enterprises; and

- (i) any other special qualification required pursuant to the solicitation.

Based upon these evaluations, the selection committee shall select the three (3) businesses that, in its judgment, are the best qualified, ranking them in priority order. The selection committee's report ranking the three (3) chosen businesses must be in writing and include data substantiating its determinations.

- v. **Notice of Selection and Ranking.** When it is determined by the Procurement Director that the ranking report is final, written notification of the highest ranked business must be sent immediately to all businesses responding to the solicitation.

- vi. **Negotiation of Contract.** The selection committee shall negotiate a contract with the highest qualified business for architect-engineer or land surveying services at compensation which is considered to be fair and reasonable to the County. In making this decision, the committee shall take into account the established value, the scope, the complexity, and the professional nature of the services to be rendered. Should the committee be unable to negotiate a satisfactory contract with the business considered to be most qualified, negotiations with that business shall be formally terminated. The committee shall then undertake negotiations with the second most qualified business. Failing award with the second most qualified business, the committee shall formally terminate negotiations. The committee shall then undertake negotiations with the third most qualified business. Should the committee be unable to negotiate a contract with any of the selected firms, the selection committee shall select additional firms in order of their competence and qualifications and continue negotiations in accordance with this Section.

- vii. **Exceptions for Small Architect-Engineer and Land Surveying Services Contracts.**

- (a) Architect-Engineer and Land Surveying Services which are estimated to not exceed Twenty Five Thousand Dollars (\$25,000.00) may be awarded by direct negotiation and selection, taking into account:

- (i) the nature of the project;
- (ii) the proximity of the architect-engineer or land surveying services to the project;
- (iii) the capability of the architect, engineer, or land surveyor to produce the required service within a reasonable time;
- (iv) past performance; and
- (v) ability to meet project budget requirements.

- (b) Fees paid to an Architect-Engineer or Land Surveying business during the twenty-four (24) month period immediately preceding the award of a contract under an exception found in this subsection shall not exceed Seventy Five Thousand Dollars (\$75,000.00).

- (c) A larger project may not be broken into smaller projects for the purposes of circumventing the provisions of this Section.

- viii. **Architect, engineer, or construction manager; performance of other work.** An architect or engineer performing design work, or a construction manager performing construction management services under a contract awarded pursuant to the provisions of subsection 2-442(g), may not perform other work, by later amendment or separate contract award, on that project as a contractor or subcontractor either directly or through a business in which he/she or his/her architectural engineering or construction management business has greater than a five percent interest. For purposes of this section, safety compliance and other incidental construction support activities performed by the construction manager are not considered work performed as a contractor or subcontractor. This subsection applies only to procurements for construction using the Construction Management, Design-Build, and Turnkey Management project delivery methods.

ORDINANCE 2010-02
Exhibit A

SECTION 2-443. Protest Procedure.

(a) **Right to Protest.** Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Procurement Director, except as otherwise stated in this Article. The protest shall be submitted in writing within seven (7) calendar days after such aggrieved prospective bidder, offeror, or contractor knows or should have known of the facts giving rise thereto.

(b) **Authority to Resolve Protests.** The Procurement Director shall have authority, prior to the commencement of an action in court concerning the controversy, to settle and resolve a protest by an aggrieved bidder, offeror, or a contractor, actual or prospective, concerning the solicitation or award of a contract.

(c) **Decision on Protests.** If the protest is not resolved by mutual agreement, the Procurement Director shall issue a decision in writing within ten (10) calendar days. The decision shall: (a) state the reasons for the action taken; and (b) inform the protestant of the protestant's rights to administrative review as provided in this Section.

(d) **Notice of Decision on Protests.** A copy of the decision under Subsection 2-443(d) of this Section shall be mailed or otherwise furnished to the protestant.

(e) **Finality of Decision on Protests.** A decision under Subsection 2-443(c) of this Section shall be final and conclusive, or a business adversely affected by the decision appeals administratively to the Procurement Appeals Board in accordance with this Section.

(f) **Authority to Debar or Suspend.** After reasonable notice to the business or person involved and reasonable opportunity for that business or person to be heard, the Procurement Director shall have authority to debar a business or person for cause from consideration for award of contracts. The Procurement Director shall also have the authority to suspend a business or person from consideration for award of contracts if there is probable cause to believe that the business or person has engaged in any activity which might lead to debarment. The period of debarment or suspension shall be as prescribed as appropriate by the Procurement Director.

(g) **Causes for Debarment or Suspension.** The causes for debarment or suspension shall include, but not be limited to, the following:

- i. Conviction of a business or any of its principal officers or employees for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
- ii. a determination by the Procurement Director that the business, as an offeror or bidder engaged in misuse of the County's protest procedure, including, but not limited to, the filing of frivolous protests or appeals, the filing of protests or appeals whereby it is clear that the basis of an appeal would not result in the protestant being awarded a contract under a solicitation, or the filing of protests or appeals intended to cause delay in awarding a contract;
- iii. a determination by the Procurement Director that the business as an offeror or bidder engaged in collusion or other anti-competitive practices;
- iv. conviction of a business or any of its principal officers or employees under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, or directly affects responsibility as a County contractor;
- v. conviction of a business or any of its principal officers or employees under State or Federal antitrust statutes arising out of the submission of bids or proposals;
- vi. violation by a business or any of its principal officers or employees of contract provisions of a character which is regarded by the Procurement Director to be so serious as to justify debarment action;
- vii. deliberate failure of the business without good cause to perform in accordance with the Specifications or within the time limit provided in a contract with the County;
- viii. a recent record by the business of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory

ORDINANCE 2010-02

Exhibit A

performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;

ix. any other cause the Procurement Director determines to be so serious and compelling as to affect responsibility as a County contractor, including debarment by another governmental entity for cause; or

x. for violation by a business or any of its principal officers or employees of the ethical standards set forth in Chapter 13 of Title 8 of the South Carolina Code of Laws, 1976, as amended (the State Ethics Act).

(h) **Decision on Debarment or Suspension.** The Procurement Director shall issue a written decision to debar or suspend. The decision shall:

i. state the reasons for the action taken; and

ii. inform the debarred or suspended business or person involved of business or person's rights to administrative review as provided in this Article.

(i) **Notice of Decision on Debarment or Suspension.** A copy of the decision under subsection 2-443(h) shall be mailed or otherwise furnished to the debarred or suspended business or person. For the purposes of subsection 2-443(i)ix., such notice shall be deemed received three (3) calendar days after such mailing, or on the day of actual delivery.

(j) **Finality of Decision on Debarment or Suspension.** A decision under subsection 2-443(h) of this Section shall be final and conclusive, or unless the debarred or suspended business or person submits a timely appeal to the Procurement Appeals Board in accordance with this Section. Debarment is not stayed pending appeal.

(k) **Contract and Breach of Contract Controversies.**

i. **Applicability.** This subsection applies to controversies between the County and a contractor and which arise under, or by virtue of, a contract between them. This includes without limitation controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or revision.

ii. **Authority.** The Procurement Director is authorized, prior to commencement of an action in a court concerning the controversy, to settle and resolve a controversy described in subsection 2-443(k)i. of this subsection.

iii. **Decision.** If such a controversy is not resolved by mutual agreement, the Procurement Director shall promptly issue a decision in writing. The decision shall: (a) state the reason for the action taken; and (b) inform the contractor of the contractor's rights to administrative review as provided in this Article.

iv. **Notice of Decision.** A copy of the decision under subsection 2-443(k)iii. of this subsection shall be mailed to the contractor.

v. **Finality of Decision.** The decision under subsection 2-443(k)iii. of this Section shall be final and conclusive, unless fraudulent, or unless the contractor submits a timely appeal to the Procurement Appeals Board in accordance with this Section.

vi. **Failure to Render Timely Decision.** If the Procurement Director does not issue the written decision required under subsection 2-443(k)iii. of this subsection within a reasonable time after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received.

(l) **Procurement Appeals Board.**

i. **Establishment, Composition, Appointment.** There is hereby established a Procurement Appeals Board, to be composed of a chairperson and at least two (2) other members, but not more than six (6) members. The chairperson and members of the Procurement Appeals Board shall be appointed by County Council but may not be members of County Council.

ORDINANCE 2010-02

Exhibit A

- ii. **Term.** The term of office of the chairperson and each member of the Procurement Appeals Board shall be two (2) years, except that in making the initial appointments, three (3) members shall be appointed for a term of one (1) year, and two (2) members and the chairperson shall be appointed for a term of two (2) years, so that half of the terms of office shall expire every year. Thereafter, their successors shall be appointed for terms of two (2) years, or for the balance of any unexpired term. Members may be reappointed for succeeding terms. County Council may terminate any board member's term of office.
- iii. **Authority of Chairperson.** The chairperson of the Procurement Appeals Board may adopt operational procedures and issue such orders, not inconsistent with this Section, as may be necessary in the execution of the Procurement Appeals Board's functions. The chairperson's authority may be delegated to any of the board members, and only members of the Procurement Appeals Board may issue decisions on appeals.
- iv. **Quorum.** Two-thirds of those members appointed to the Procurement Appeals Board and serving at any given time shall constitute a quorum for the conduct of business.
- v. **Administrative Support.** The County Administrator shall provide such services as the chairperson of the Procurement Appeals Board requests, on such basis as may be required.
- vi. **Qualifications for Membership.** The chairperson of the Procurement Appeals Board shall be experienced in contract or commercial matters. The remaining members of the Procurement Appeals Board shall be representative of, but not limited to, the below listed professions and shall be qualified in terms of experience and education to examine facts and apply legal principles to the controversies falling within the Board's jurisdiction:
- (a) Goods and services,
 - (b) Construction,
 - (c) Architect/engineer, and
 - (d) Procurement.
- vii. **Jurisdiction.** Unless an action has been initiated previously in the courts for essentially the same cause of action, unless the action has been exempted from this section, or unless the act complained of was an act of County Council, the Procurement Appeals Board shall have authority to review and determine:
- (a) Any protest of a solicitation or award of a contract addressed to the Procurement Appeals Board by an aggrieved actual or prospective bidder or offeror; and
 - (b) Any appeal by an aggrieved party from a determination by the Procurement Director, which is authorized in subsection 2-443(c), subsection 2-443(h), and subsection 2-443(k)iii.
- viii. **Rules of Procedure.** The Procurement Appeals Board shall adopt Rules of Procedure which, to the fullest extent possible, will provide for the expeditious resolution of controversies.
- ix. **Time Limit for Filing an Appeal.** For an appeal under subsection 2-443(a), the aggrieved business shall file an appeal with the Procurement Appeals Board within seven (7) days of receipt of decision. For an appeal under subsection 2-443(j) and subsection 2-443(k)v., the aggrieved business or person shall file the appeal with the Procurement Appeals Board within fourteen (14) days of the receipt of a decision. Appeals to the Procurement Appeals Board shall be delivered to the Procurement Director, who shall so notify the chairperson.
- x. **Decisions.** Upon receipt of an appeal from an aggrieved party, the chairperson shall convene the Procurement Appeals Board within ten (10) days to conduct an administrative review of the appeal. The Board, within ten (10) days of hearing such appeal, shall affirm, alter, or deny the decisions rendered by the Contracts and Procurement Director and deliver the notice of their decision to the aggrieved party and the County by the means specified in subsection 2-443(j). The Procurement Appeals Board shall promptly decide whether or not the:

ORDINANCE 2010-02

Exhibit A

(a) Solicitation or award being appealed was in accordance with regulations, and the terms and conditions of the solicitation.

(b) Debarment or suspension being appealed was in accordance with regulations and in the best interests of the County, and was fair.

(c) Contract and breach of contract controversy settlement being appealed was in accordance with regulations and in the best interests of the County, and was proper.

xi. **Standard of Review for Factual Issues.** A determination of an issue of fact by the Procurement Appeals Board shall be final and conclusive unless arbitrary and capricious.

xii. **Finality and Appeal of Procurement Appeals Board Decisions.** The decision of the Procurement Appeals Board shall be final unless appealed to County Council by either the County or the business or person, within ten (10) days after service of notice of the Procurement Appeals Board's decision, using the same time criteria of subsection 2-443(j). County Council shall review the records and without further hearing affirm, modify, or deny the appeal in open session. The decision of County Council shall be final and any stay that may be instituted shall be lifted at that time. Service of notice of the decision of County Council may be accomplished by delivery in person or by mailing, and shall be complete when either delivered in person or placed in the mail. Service may be made either to the business or person or to the business or person's attorney.

(m) **Stay of Procurement During Protest or Appeal.** In the event of a timely protest under this section, the County shall not proceed further with the solicitation or with the award of the Contract until a final decision has been made and the time for appeal has expired, unless the Procurement Director, after consultation with the head of the using department, makes a written determination that the award of the Contract is necessary to protect substantial interests of the County.

(n) **Solicitations or Awards in Violation of the Law.** The provisions of this subsection apply where it is determined by the Procurement Director, or upon administrative review, and in the County's sole discretion, that a solicitation or award of a contract is in violation of law.

i. **Remedies Prior to Award.** If prior to award, it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be:

(a) cancelled; or

(b) revised to comply with the law and rebid; or

(c) revised to comply with the law and awarded in a manner that complies with the provisions of this Article.

ii. **Remedies After An Award.** If after an award of a contract, it is determined that the solicitation or award is in violation of law, then:

(a) if the business awarded the contract has not acted fraudulently or in bad faith:

(i). the contract may be ratified and affirmed, provided it is determined that doing so is in the best interest of the County; or

(ii). the contract may be terminated and the business awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract prior to the termination.

(b) if the business awarded the contract has acted fraudulently or in bad faith:

(i). the contract may be declared null and void; or

(ii). the contract may be ratified and affirmed if such action is in the best interest of the County, without prejudice to the County's right to such damages as may be appropriate.

ORDINANCE 2010-02
Exhibit A

SECTION 2-444. Intergovernmental Relations.

(a) **Cooperative Procurement Authorized.** The Procurement Director may either participate in, sponsor, conduct, or administer a cooperative procurement agreement for the procurement of property, supplies, services, or construction services with one or more Public Procurement Units in accordance with an agreement entered into between the participants. Such cooperative procurement may include, but is not limited to, joint or multi-party contracts between Public Procurement Units. Examples of such cooperative procurement are General Services Administration (GSA) contracts, supplies and/or services procured from another governmental agency, and the U.S. Communities Government Purchasing Alliance.

(b) **Sale, Acquisition or Use of Supplies.** The Procurement Director may sell to, acquire from, or use any supplies belonging to another Public Procurement Unit independent of the requirements of this Article.

(c) **Cooperative Use of Supplies or Services.** The Procurement Director may enter into an agreement, independent of the requirements of this Article, with any Public Procurement Unit for the cooperative use of supplies or services under the terms agreed upon between the parties.

(d) **Joint Use of Facilities/Equipment.** The Procurement Director may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another Public Procurement Unit under the terms agreed upon between the parties.

(e) **Use of State Contracts.** The Procurement Director may, independent of the requirements of this Article, procure supplies, services or construction items through the contracts established by the Purchasing Division of the State as provided in Chapter 35 of Title 11 of the South Carolina Code of Laws, 1976, as amended (State Consolidated Procurement Code).

SECTION 2-445. Supply Management.

(a) **Receiving and Inventory Regulations.** The Procurement Director shall promulgate regulations and procedures to insure proper receipt, identification, and inventory control for all supplies purchased for County use.

(b) **Prequalification of Suppliers.** Prospective suppliers may be prequalified for particular types of property, supplies, services, and/or construction. Solicitation mailing lists of potential contractors shall include but shall not be limited to such prequalified suppliers.

(c) **Sale, Transfer and Disposal of Surplus Supplies and Property.** Subject to County Council's review and approval by resolution, the Procurement Director shall promulgate regulations governing the sale, transfer, or disposal of surplus supplies and property by public auction, competitive sealed bidding or other appropriate methods designated by such regulations, and the transfer of excess supplies between departments. The Procurement Director shall have authority to transfer such items to other County departments or to approve the disposal of unwanted items that cannot be sold.

(d) **Trade-In Sales.** The Procurement Director shall promulgate regulations and procedures to govern the trade-in of personal property owned by the County.

(e) **Allocation of Proceeds from Sale or Disposal of Surplus Supplies.** Proceeds from the sale or disposal of surplus supplies and property shall be deposited into the County's general fund except for any proceeds from the sale of equipment belonging to the County rock quarry, which will be deposited back into the enterprise account for that activity.

SECTION 2-446. Real Property.

(a) The County acknowledges that all parcels of real property are unique and principles of competitive bidding do not apply to distinct and singular purchases of real property by the County.

(b) The following rules shall apply to the sale or lease of County-owned real property:

- i. The County shall sell, contract to sell, acquire by purchase, exchange or gift, real property only upon recommendation of the Finance Committee and approval of County Council. At least one appraisal by a certified appraiser shall be received.

ORDINANCE 2010-02

Exhibit A

- ii. The County shall contract to lease, sublease, or cause to be leased real property for a definite period of more than one year only upon the recommendation of the Finance Committee and approval by County Council.
- iii. A public hearing must be held, after reasonable public notice, and an ordinance enacted, prior to final County action to sell or lease real property owned by the County.

SECTION 2-447. Sale of Surplus Stone and Gravel Products.

(a) **Purpose of section.** The County Council recognizes that there are from time to time surplus stone, gravel and related quarry products available for sale at the County rock quarry, purely as a by-product of the County's operation of the county rock quarry for its own use, and that it is desirable that a method for such sales, priorities of customers seeking to acquire such products, and the method of payment and accounting for such sales is provided.

(b) **Availability.** Only "surplus" gravel, stone, and like products will be available for sale to other parties. The term "surplus" means excess products after satisfaction of all present and reasonably foreseeable County future needs, including a reasonable stockpile in the event of emergencies, break down of equipment, or unforeseen demand for County purposes. The quarry plant manager of the County rock quarry shall be charged with maintaining a sufficient surplus of stone, gravel, and related products to meet the needs of the County, including the stockpile provided for in this section; and no such stone, gravel, or other products shall be sold or offered for sale unless the supply available is declared to be surplus by the quarry plant manager, who shall, as evidence of the quarry plant manager's declaration of availability, execute an authorization for the sale of such items, including amounts available as to each of the products that may be offered for sale. In addition thereto, the quarry plant manager may, when the amount of such products available for resale is limited, impose a limitation as to an amount that a customer may purchase so as to make such products available to the largest number of citizens of the County who may desire to make such purchases as is reasonable and practicable. Notwithstanding any other provision of this Article, request by municipalities of the County for the purchase of stone, gravel, or other related products for the use upon the public streets and roads of such municipalities shall be considered a "County use" of such products. The quarry plant manager shall satisfy such requests of the municipalities, as well as that of the County, including a stock pile or reserve, prior to declaring any stone "surplus."

(c) **Cost.** The surplus stone, gravel, or related products shall be offered for sale, based on priorities established in this Article for a price not less than "costs" of production thereof as determined by good and accepted accounting practices, plus ten percent of such costs. Included in those items which shall be used as factors for determining the costs are, but not limited to, the following: depreciation of equipment for a period not exceeding twenty (20) years, to include both depreciation of costs and interest, maintenance, wages and salaries and fringe benefits of quarry employees; a royalty equal to ten percent (10%) per ton of each product sold to recover the costs of land from which the rock is being taken and its depletion; fuel; insurance, including worker's compensation for employees; and all other normal "overhead" expenses.

(d) **Operation of quarry.** There shall be kept and maintained a log of all stone, gravel, and related products taken from the County quarry regardless of the use to which such items and products are consigned. This log shall include the determined weight of the load, employing the available scales for weighing such products; the nature and type of products, if the same is for County use, the designated truck which removes the same from the quarry and its destination; and the name of the customer and the customer's classification according to the priority list, if the same is declared to be surplus and sold pursuant to the terms of this section.

(e) **Sales and payment.** The sale of stone, gravel, or other related products produced by the County rock quarry to businesses, persons, or governmental entities shall be based upon the availability of the product sought to be purchased according to the priorities established in this section and shall be for cash at the time of purchase except as follows:

- i. The state and/or any political subdivisions or municipalities of the state and the United States government shall be allowed to purchase stone, gravel, or related products from the County upon such terms and conditions, including cash or credit and according to such procedures as the County Administrator shall from time to time determine.

ORDINANCE 2010-02

Exhibit A

ii. All businesses or persons within or without the state and all nonfederal governmental entities existing outside of the state shall be allowed to purchase stone, gravel or related products for credit upon the following terms and conditions:

(a) Prior to being permitted to purchase stone, gravel or other related products from the County rock quarry, the purchaser shall first submit to the County, an application for credit signed by a duly authorized person upon such forms as the County Administrator shall from time to time prescribe and shall pay to the County treasurer an application fee of Fifty Dollars (\$50.00). The application shall clearly state the name in which the credit account is to be maintained, the social security or federal identification numbers of the persons or entities seeking credit and shall list the names and proper mailing addresses and phone numbers of a minimum of five references. One reference must be a bank or lending institution or branch thereof duly chartered and doing business in the County; one reference must be a major credit card company; and three references must be the County business persons or establishments with whom or which the applicant has enjoyed credit for a minimum period of three years. The applicant's credit history shall then be investigated in any manner and through any agencies and/or credit reporting services, which the County Administrator deems appropriate and each credit reference listed shall be checked within 45 days after receipt of the application. Upon investigation, if the applicant's credit history is favorable using the appropriate methods deemed necessary by the County Administrator (or designee) and the Finance Director, the applicant may be to be determined by the County Administrator (or designee) and the Finance Director, but in no event shall credit be extended in excess of Fifty Thousand Dollars (\$50,000.00) for purchases made at the County rock quarry between 7:30 a.m. on Saturday to 4:30 p.m. on Friday of the following week, at which time payment for all purchases during the period shall be immediately due in County rock quarry office by 3:00 p.m. on Friday and payable in full unless the due date is a legal holiday, in which case, the due date shall be the next regularly scheduled work day at the County rock quarry. Those parties who currently are extended credit for purchases at the County rock crusher shall continue to be extended credit for 60 days from the date of this Article.

(b) Credit purchases may be made in any amount at any time by any business, person, and/or other nongovernmental entity or nonfederal governmental entity existing outside of the state for a period not exceeding thirty (30) days with or without a credit application being filed, provided that prior to purchase, the purchaser furnishes to the County Administrator or designee an irrevocable letter of credit issued by a duly chartered banking or lending institution doing business in the state, payable to the County treasurer for a minimum term or period of ninety (90) days and containing such other terms as the County Administrator shall determine to be necessary to fully protect the County if the purchaser fails or refuses to pay for purchases on the 30th day following purchase, and/or fails or refuses to pay the entire balance due for any and all purchases made sixty (60) days prior to the expiration date of the letter of credit. The amount of credit purchases that may be outstanding at any one time shall not exceed the amount stated and guaranteed by the letter of credit and the term during which credit sales shall be permitted pursuant to the letter of credit shall commence with the effective date of the letter of credit and continue to 5:00 p.m. on the 60th day prior to the expiration date thereof.

(c) A purchaser who has received credit pursuant to section 2-447(e)ii.(a) may request additional credit from the County for the purchase of stone, gravel or other related products from the County rock quarry, upon submission of a letter to the Finance Director requesting additional credit. Upon receipt of a letter requesting additional credit, the County Administrator, the Finance Director and the superintendent of the County rock quarry shall meet and determine whether additional credit should be extended. The County Administrator, the Finance Director and the superintendent of the County rock quarry shall determine the amount of credit to be extended (which may exceed the \$50,000.00 limit set forth in subsection 2-447(e)ii.(a)) and the length of time that credit may be extended. In no event shall credit be extended for more than thirty (30) days.

ORDINANCE 2010-02

Exhibit A

iii. The County Council shall be furnished a listing quarterly of individuals, firms, corporations, and/or other nongovernmental agencies making application for credit at the County rock quarry and the status of such applications.

(f) **County equipment.** All stone, gravel or related products sold, pursuant to the terms of this section, to any business, person, or nongovernmental entity shall be hauled and carried away by the purchaser, and no County equipment may be used in the transporting of such materials or the unloading of the same at their point of destination.

(g) **Warranties.** All businesses, persons, or other entities purchasing surplus stone, gravel or related products from the County shall do so after being informed by appropriate printing on the proof of purchase to be supplied to the County treasurer that such sale is free of any warranty, expressed or implied, as to the fitness suitability, quality, or character of the product being purchased. In addition, no liability shall attach to the County by reason of damage to any truck or vehicle supplied by the purchaser to haul such materials occasioned by the negligence of the County or any of its employees, and that such purchaser assumes the risk in presenting such vehicle for loading.

**STATE OF SOUTH CAROLINA
OCONEE COUNTY
ORDINANCE NO. 2010-05**

AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF SPECIAL SOURCE REVENUE BONDS OF OCONEE COUNTY, SOUTH CAROLINA; PRESCRIBING THE FORM OF BONDS; LIMITING THE PAYMENT OF THE BONDS SOLELY TO THE PLEDGED REVENUES RECEIVED AND RETAINED BY THE COUNTY FROM THE PAYMENT OF FEES IN LIEU OF TAXES FROM CERTAIN JOINT COUNTY INDUSTRIAL AND BUSINESS PARKS AND PLEDGING THE PLEDGED REVENUES TO SUCH PAYMENT; CREATING CERTAIN FUNDS AND PROVIDING FOR PAYMENTS INTO SUCH FUNDS; AND MAKING OTHER COVENANTS AND AGREEMENTS IN CONNECTION WITH THE FOREGOING.

Enacted: _____, 2010

TABLE OF CONTENTS

(This Table of Contents for this Ordinance is for convenience of reference only and is not intended to define, limit or describe the scope or intent of any provision of this Ordinance).

	<u>Page</u>
ARTICLE I	
DEFINITIONS	
Definitions	1
ARTICLE II	
FINDINGS AND DETERMINATIONS	
Section 2.1. Findings and Determinations	9
ARTICLE III	
AUTHORIZATION AND ISSUANCE OF BONDS	
Section 3.1. Authorization of Bonds	11
Section 3.2. General Provisions for Issuance of Bonds	11
Section 3.3. Conditions for the Issuance of Bonds under this Ordinance other than Refunding Bonds	12
Section 3.4. Refunding Bonds	13
Section 3.5. Junior Bonds	13
ARTICLE IV	
THE BONDS	
Section 4.1. Execution	14
Section 4.2. Authentication	14
Section 4.3. Registration and Transfer of Bonds; Persons Treated as Holders	14
Section 4.4. Form of Bonds; Denominations; Medium of Payment	15
Section 4.5. Numbers, Date, and Payment Provisions	15
Section 4.6. Exchange of Bonds	16
Section 4.7. Regulations with Respect to Exchanges and Transfer	16
Section 4.8. Temporary Bonds	16
Section 4.9. Mutilated, Lost, Stolen or Destroyed Bonds	17

ARTICLE V
REDEMPTION OF BONDS

Section 5.1.	Redemption of Bonds	18
Section 5.2.	Selection of Bonds for Redemption	18
Section 5.3.	Notice of Redemption	18
Section 5.4.	Partial Redemption of Bond.....	19
Section 5.5.	Effect of Redemption.....	19
Section 5.6.	Cancellation	19

ARTICLE VI
ESTABLISHMENT OF FUNDS;
SECURITY FOR AND PAYMENT OF THE BONDS;
INVESTMENT OF MONEYS

Section 6.1.	Listing of Funds and Accounts	20
Section 6.2.	Disposition of Pledged Revenues	20
Section 6.3.	Security for and Payment of the Bonds	21
Section 6.4.	Accounting Methods.....	22
Section 6.5.	Revenue Fund	22
Section 6.6.	Debt Service Funds.....	22
Section 6.7.	Debt Service Reserve Funds.....	24
Section 6.8.	Distribution of Remaining Pledged Revenues.....	26
Section 6.9.	Establishment of Construction Fund.....	26
Section 6.10.	Investment of Funds.....	27

ARTICLE VII
COVENANTS

Section 7.1.	To Pay Principal, Premium, and Interest on the Bonds	28
Section 7.2.	Joint County Industrial and Business Parks.....	28
Section 7.3.	Records, Accounts and Audits.....	28
Section 7.4.	Other Obligations and Special Source Credits.....	28

ARTICLE VIII
TRUSTEE; RESIGNATION OF TRUSTEE; LIABILITY OF
TRUSTEE FOR INVESTMENTS; CUSTODIANS

Section 8.1.	Trustee.....	29
Section 8.2.	Resignation of Trustee.....	32
Section 8.3.	Removal of Trustee.....	32
Section 8.4.	Successor Trustee.....	32
Section 8.5.	Custodians.....	33

ARTICLE IX
AMENDMENTS OR SUPPLEMENTS TO THIS ORDINANCE

Section 9.1. Amendments or Supplements to this Ordinance.....34

ARTICLE X
EVENTS OF DEFAULT

Section 10.1. Events of Default36

ARTICLE XI
REMEDIES UPON EVENT OF DEFAULT

Section 11.1. Declaration of Principal and Interest as Due37
Section 11.2. Suits at Law or in Equity and Mandamus.....37
Section 11.3. Remedies Not Exclusive; Effect of Waiver of Default; Effect of
Abandonment of Proceedings or Adverse Determination38
Section 11.4. Restrictions on Bondholder's Action.....38
Section 11.5. Application of Revenues and Other Moneys After Default.....39

ARTICLE XII
DEFEASANCE

Section 12.1. Defeasance41

ARTICLE XIII
MISCELLANEOUS

Section 13.1. Benefits of Ordinance Limited to the County, the Trustee and Holders
of the Bonds43
Section 13.2. Ordinance Binding Upon Successors or Assigns of the County.....43
Section 13.3. No Personal Liability43
Section 13.4. Effect of Saturdays, Sundays and Legal Holidays.....43
Section 13.5. Partial Invalidity.....44
Section 13.6. Law and Place of Enforcement of this Ordinance44
Section 13.7. Effect of Article and Section Headings and Table of Contents.....44
Section 13.8. Amendment to Multi-County Park Ordinances; Distribution of
Highpointe/PointeWest Park Fee Payments; Repeal of
Inconsistent Ordinances and Resolutions44
Section 13.9. Effectiveness of this Ordinance45
Section 13.10. Notices45
Section 13.11. Codification.....45

BE IT ORDAINED BY THE COUNTY COUNCIL OF OCONEE COUNTY, SOUTH CAROLINA, IN COUNCIL ASSEMBLED:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions. Unless the context shall clearly indicate some other meaning, the terms defined in this Section shall, for all purposes of this Ordinance and of any ordinance, resolution, certificate, opinion, instrument or other document herein or therein mentioned, have the meanings herein specified. Definitions shall be equally applicable to both the singular and plural forms of any of the terms herein defined and vice versa. The term:

“Accountant” shall mean an independent certified public accountant or a firm of independent certified public accountants selected by the County.

“Act” shall mean Sections 4-1-175 and 4-29-68 of the South Carolina Code, and all other statutory authorizations, now or hereinafter enacted, authorizing and enabling the County to provide for the issuance of the Bonds.

“Authorized County Representative” shall mean the person or persons at the time designated to act on behalf of the County for the purpose of performing any act under this Ordinance or any Supplemental Ordinance by a written certificate furnished to the Trustee or a Custodian containing the specimen signature of such person or persons and signed on behalf of the County by the County Administrator.

“Bond” or “Bonds” shall mean any Bond, some of the Bonds or all of the Bonds issued under and pursuant to Article III hereof, including the Bond of 2010, excluding Junior Bonds.

“Bond Counsel” shall mean any attorney or firm of attorneys of nationally recognized standing in matters pertaining to the federal tax exemption of interest on obligations issued by states and political subdivisions, and duly admitted to practice law before the highest court of any state of the United States.

“Bondholders” or the term “Holder” or any similar term shall mean the registered owner or owners of any Outstanding Bond or Bonds.

“Bond of 2010” shall mean the \$3,500,000 Oconee County, South Carolina, Special Source Revenue Bond, Series 2010, authorized under this Ordinance and the First Supplemental Ordinance.

“Bond Redemption Account” shall mean the account, if any, by that name created within each respective Debt Service Fund.

“Books of Registry” shall mean the registration books maintained by the Registrar in accordance with Section 4.3 hereof.

"Business Day" shall mean, except as otherwise provided with respect to a Series of Bonds in a Supplemental Ordinance, any day other than a Saturday, a Sunday or a day which shall be in the State or the state in which the principal corporate trust office of the Trustee is located a legal holiday or a day on which banking institutions are authorized by law or executive order to close.

"Construction Fund" shall mean any fund established with and maintained by the Custodian selected by the County and derived from certain of the proceeds of the sale of the Bonds and intended to defray the costs of all or a portion of any Project and to pay Costs of Acquisition and Construction (exclusive of any capitalized interest on Bonds which may be deposited in a Debt Service Fund) in connection therewith, as established in a Supplemental Ordinance authorizing the issuance of any Series of Bonds.

"Costs of Acquisition and Construction" shall mean, to the extent permitted by the Act, all costs (including, but not limited to, architectural and engineering fees) of designing, acquiring, constructing, improving, or expanding one or more Projects, including the Costs of Issuance and capitalized interest on Bonds, sums required to reimburse the County for payments previously made with respect to a Project, and funding of a Debt Service Reserve Fund. Costs of Acquisition and Construction shall include the payment of amounts due on bond anticipation notes, the proceeds of which were used for Costs of Acquisition and Construction.

"Costs of Issuance" shall mean all items of expense, directly or indirectly payable or reimbursable by or to the County and related to the authorization, sale and issuance of a Series of Bonds including, but not limited to, printing costs, costs of preparation and reproduction of documents, filing and recording fees, initial fees and charges of any Trustee, Custodian, Registrar or Paying Agent, legal fees and charges, auditing and accounting fees and charges, fees and disbursements of consultants and professionals, costs of credit ratings, bond insurance or surety bond premiums, fees and charges for preparation, execution, transportation and safekeeping of Bonds, costs and expenses of any refunding, premiums for insurance relating to the issuance of Bonds, financing charges, and any other costs, charges or fees in connection with the original issuance of Bonds.

"Council" shall mean the County Council of the County.

"County" shall mean Oconee County, South Carolina.

"Custodian" shall mean any bank, depository or trust company duly qualified and doing business within the State selected by the County as a depository of moneys or securities held in the Construction Fund. A Supplemental Ordinance may appoint the County Treasurer as Custodian.

"Debt Service" shall mean, with respect to each Series of Bonds and with respect to any particular Fiscal Year, the aggregate of the amounts to be paid or set aside (or estimated to be required to be paid or set aside) in the applicable Debt Service Fund in such Fiscal Year for the payment of the principal of, redemption premium, if any, and interest (to the extent not capitalized or not payable from the proceeds of Bonds or investment earnings thereon) on such Series of Bonds. With respect to Variable Rate Indebtedness then Outstanding, interest thereon

shall be calculated at the actual average rate of interest on the Variable Rate Indebtedness during the twelve (12) months immediately preceding the date of calculation (or such lesser period during which the Variable Rate Indebtedness has been Outstanding); provided, that for purposes of any prospective calculation, interest on Variable Rate Indebtedness shall be calculated at the lesser of (a) the 25-Bond Revenue Index published by *The Bond Buyer* (or if no longer published, any reasonably equivalent nationally recognized index published for the periods in question selected by the County) no more than two weeks prior to the date of calculation or (b) the maximum interest rate allowable on such Variable Rate Indebtedness. In the case of Bonds which have been or shall be issued as taxable obligations, for which the County has or shall be entitled to receive a payment that effectively reduces the County's debt service payment obligation therefor (including but not limited to Build America Bonds ("BABs") issuable pursuant to the authority of the American Recovery and Reinvestment Act of 2009 (the "ARRA")), the amount to be paid or set aside in the applicable Debt Service Fund in each Fiscal Year for such payment of Debt Service shall be reduced by the payment that the County has or shall be entitled to receive for such purpose.

"Debt Service Fund" shall mean the respective funds of that name established pursuant to Section 6.6 of this Ordinance and so designated pursuant to a Supplemental Ordinance to provide for the payment of the principal of and interest on the respective Series of Bonds issued pursuant to this Ordinance as the same respectively become due and payable.

"Debt Service Reserve Fund" shall mean the respective funds, if any, of that name established pursuant to the authorization of Section 6.7 of this Ordinance and so designated pursuant to a Supplemental Ordinance or this Ordinance to provide for the payment of the principal of and interest on the respective Series of Bonds issued pursuant to this Ordinance as the same respectively become due and payable.

"Default" or "Event of Default" shall mean any of those defaults specified in and defined by Section 10.1 hereof.

"Fee Payments" shall mean the payments made by owners or lessees (including payments made by any Person on behalf of such owner or lessee) of any property situated both in the County and in one or more of the Joint County Industrial and Business Parks. As provided in the Park Act, such Fee Payments are to be in an amount equivalent to the property taxes or other in-lieu-of payments that would have been due and payable with respect to such property except for the exemption from *ad valorem* taxation provided for in the Park Act.

"First Supplemental Ordinance" shall mean First Supplemental Ordinance No. 2010-06 enacted by the Council on _____, 2010, authorizing the issuance of the Bond of 2010.

"Fiscal Year" shall mean the fiscal year of the County, initially being the period from July 1 in any year to and including June 30 of the following year.

"Government Obligations" shall mean, except as limited with respect to the funds and accounts relating to a Series of Bonds by a Supplemental Ordinance, any of the following to the extent now or hereafter permitted by the laws of the State:

(1) cash;

(2) United States Treasury Obligations – State and Local Government Series;

(3) United States Treasury bills, notes, bonds or zero coupon treasury bonds all as traded on the open market;

(4) direct obligations of the U.S. Treasury which have been stripped by the Treasury itself, including CATS, TIGRS and similar securities;

(5) obligations of any agencies or instrumentalities which are backed by the full faith and credit of the United States of America;

(6) bonds or debentures issued by any Federal Home Loan Bank or consolidated bonds or debentures issued by the Federal Home Loan Bank Board;

(7) obligations of the Federal National Mortgage Association; or

(8) any legally permissible combination of any of the foregoing.

Government Obligations must be redeemable only at the option of the holder thereof.

“Highpointe/PointeWest Park” shall mean the Joint County Industrial and Business Park established pursuant to Highpointe/PointeWest Park Agreement.

“Highpointe/PointeWest Park Agreement” shall mean that certain Agreement for Development of Joint County Business Park between the County and Pickens County approved by the County’s Ordinance No. 2010-07.

“Interest Account” shall mean the account by that name created within each respective Debt Service Fund.

“Interest Payment Date” shall mean the respective interest payment dates for a Series of Bonds as determined by a Supplemental Ordinance.

“Joint County Industrial and Business Park” shall mean any present or future joint county industrial and business park established by the County and a Partner County pursuant to (1) a Park Agreement, and (2) the Park Act.

“Junior Bonds” shall mean either (a) bonds or bond anticipation notes secured by a pledge of Pledged Revenues junior and subordinate in all respects to the pledge securing the Bonds, or (b) any other form of indebtedness secured by Pledged Revenues after provision has been made for all payments required to be made with respect to the Bonds, which bonds or indebtedness may be authorized by an ordinance of Council which is not supplemental to this Ordinance.

“Maximum Debt Service” shall mean the highest aggregate principal and interest requirements (to the extent not paid from the proceeds of Bonds or investment earnings thereon) on the Bonds then Outstanding during any then current or future Fiscal Year. In the case of

determining the Maximum Debt Service for purposes of Section 3.3 of this Ordinance, interest on Variable Rate Indebtedness shall be calculated at the lesser of (a) the 25-Bond Revenue Index published by *The Bond Buyer* (or if no longer published, any reasonably equivalent nationally recognized index published for the periods in question selected by the County) no more than two weeks prior to the date of calculation or (b) the maximum interest rate allowable on such Variable Rate Indebtedness. In the case of Bonds which have been or shall be issued as taxable obligations, for which the County has or shall be entitled to receive a payment that effectively reduces the County's debt service payment obligation therefor (including but not limited to BABs issuable pursuant to the authority of the ARRA (as such terms are referred to in the definition of "Debt Service" above)), the highest aggregate principal and interest requirements for such Bonds during any Fiscal Year shall be reduced by the payment that the County has or shall be entitled to receive therefor.

"Moody's" shall mean Moody's Investors Service, Inc., or its successors.

"Multi-County Fees" shall mean the Fee Payments paid by the County to a Partner County (on behalf of properties located in the County) pursuant to the terms of a Park Agreement.

"Multi-County Park Ordinances" shall mean, collectively, all ordinances of the County authorizing the execution and delivery of any Park Agreement between the County and any Partner County in order to establish any Joint County Industrial and Business Park, and any ordinances of the County authorizing any amendments to any such Park Agreements.

"Net Fee Payments" shall mean: (a) with respect to any property located in the Highpointe/PointeWest Park, 100% of the Fee Payments paid by or on behalf of the owners or lessees of any property located in the Joint County Industrial and Business Park established pursuant to the Highpointe/PointeWest Park Agreement and the Multi-County Park Ordinance that approved the same, calculated after payment of any Multi-County Fees due to the Partner County under the terms of the Highpointe/PointeWest Park Agreement; and (b) with respect to any property located in the County and in any Joint County Industrial and Business Park (exclusive of property located in the Highpointe/PointeWest Park), the product of fifteen percent (15%) of the Fee Payments paid by or on behalf of the owners or lessees of such property, calculated prior to the payment of any Other Obligations and Special Source Credits and after payment of any Multi-County Fees due to a Partner County under the terms of the respective Park Agreements.

"Other Obligations" shall mean any special source revenue bonds (excluding Bonds and Junior Bonds issued pursuant to this Ordinance) heretofore or hereafter issued by the County pursuant to the Act and payable from payments made by owners or lessees of any property situated both in the County and in one or more of the Joint County Industrial and Business Parks.

"Outstanding", when used with respect to any Bond, shall have the construction given to such word in Article XII hereof; i.e., a Bond shall not be Outstanding if such Bond is not, or would not be at the time, deemed to be Outstanding by reason of the operation and effect of said Article XII.

"Park Act" shall mean Section 4-1-170 of the South Carolina Code, Article VIII, Section 13 of the Constitution of the State, as amended, and all other statutory or constitutional authorizations, now or hereinafter enacted, authorizing and enabling the existence of Joint County Industrial and Business Parks.

"Park Agreement" shall mean any current or future agreement for the development of a Joint County Industrial and Business Park between the County and a Partner County, and any and all amendments or supplements thereto, pursuant to the Park Act. As of the date of enactment of this Ordinance, the Park Agreements include:

(1) Agreement for Development for Joint County Industrial Park between the County and Williamsburg County, South Carolina, dated July 25, 1994, as amended from time to time;

(2) Agreement for Development for Joint County Industrial Park between the County and Pickens County, South Carolina, dated May 4, 1998, as amended from time to time;

(3) Agreement for Development for Joint County Industrial Park between the County and Pickens County, South Carolina, dated January 15, 2007, as amended from time to time; and

(3) The Highpointe/PointeWest Park Agreement.

"Park Agreement Revenues" shall mean any revenues or fees received and retained by the County from a Partner County pursuant to a Park Agreement.

"Partner County" shall mean any other county of the State with which the County has agreed or agrees to create a Joint County Industrial and Business Park pursuant to a Park Agreement and the Park Act.

"Paving Agent" shall mean for each Series of Bonds the respective paying agent or paying agents appointed pursuant to the proceedings authorizing such Bonds.

"Permitted Investments" shall mean, except as limited with respect to the funds and accounts relating to a Series of Bonds by a Supplemental Ordinance, (a) any one or more of the investments now or hereafter permitted by Section 6-5-10 or Section 11-1-60 of the South Carolina Code, and in effect from time to time, or any authorization relating to the investment of funds hereunder; and (b) the South Carolina Pooled Investment Fund or similar State-administered pool investment fund.

"Person" or words importing "persons" means firms, associations, partnerships (including without limitation, general and limited partnerships), joint ventures, societies, estates, trusts, corporations, other legal entities and natural persons.

"Pledged Revenues" shall mean the sum of: (1) the Net Fee Payments remaining after the payment of Other Obligations and the application of Special Source Credits; and (2) the Park Agreement Revenues.

"Principal Account" shall mean the account by that name created within each respective Debt Service Fund.

"Principal Payment Date" shall mean the respective principal payment dates for a Series of Bonds as determined by a Supplemental Ordinance.

"Project" or "Projects" shall mean (a) any infrastructure serving the County or a project; (b) improved or unimproved real estate used in the operation of a manufacturing or commercial enterprise; and (c) such other purposes which may now or hereafter be permitted under the Act and for which special source revenue bonds may be issued. A Project may be located outside of the boundaries of a Joint County Industrial and Business Park.

"Record Date" shall mean, with respect to any Series of Bonds, the fifteenth (15th) day (whether or not a Business Day) of the calendar month immediately preceding an Interest Payment Date or such other day as may be provided in the Supplemental Ordinance authorizing the issuance of such Series of Bonds.

"Registrar" shall mean, for each Series of Bonds, the registrar appointed pursuant to the proceedings authorizing such Bonds.

"Reserve Fund Requirement" shall mean, as of the date of calculation, the debt service reserve fund requirement, if any, established pursuant to a Supplemental Ordinance authorizing the issuance of a Series of Bonds.

"Revenue Fund" shall mean the fund of that name established pursuant to Section 6.5 of this Ordinance.

"S&P" shall mean Standard & Poor's Credit Markets Service, a Division of The McGraw-Hill Companies, Inc., or its successors.

"Series" or "Series of Bonds" or "Bonds of Series" shall mean all Bonds designated as being of the same series issued and delivered on original issuance in a simultaneous transaction, and any Bonds thereafter delivered in lieu thereof or in substitution therefor pursuant to this Ordinance.

"Special Source Credit" shall mean any credit or payment heretofore or hereafter granted by the County against any fee payment pursuant to Section 4-1-175, Section 4-12-30(K)(3), Section 4-29-67(L)(3), or Section 12-44-70 of the South Carolina Code or any successor or similar provision of State law to any entity having property within any Joint County Industrial and Business Park.

"South Carolina Code" shall mean the South Carolina Code of Laws 1976, as amended.

"State" shall mean the State of South Carolina.

"Supplemental Ordinance" shall mean any ordinance enacted by the Council providing for the issuance of a Bond or Bonds hereunder, including the First Supplemental Ordinance, and

any ordinance enacted by the Council pursuant to and in compliance with the provisions of Article IX hereof amending or supplementing the provisions of this Ordinance or any Supplemental Ordinance.

"Taxing Districts" shall mean the County and the School District of Oconee County, South Carolina.

"Term Bond" shall mean any Bond designated by the Supplemental Ordinance providing for its issuance as being subject to retirement or redemption from moneys credited to the applicable Bond Redemption Account as sinking fund installments.

"Trustee" shall mean U.S. Bank National Association, and any successor Trustee appointed in accordance with Article VIII hereof.

"Variable Rate Indebtedness" shall mean indebtedness in the form of Bonds, the interest rate on which is not established at a fixed or constant rate at the time such indebtedness is incurred.

[Remainder of page intentionally left blank]

ARTICLE II

FINDINGS AND DETERMINATIONS

Section 2.1. Findings and Determinations. The Council hereby finds and determines:

A. The County is a political subdivision of the State of South Carolina and as such has all powers granted to counties by the Constitution and general laws of the State.

B. Article X, Section 14, of the Constitution of the State of South Carolina, 1895, as amended, provides that indebtedness payable solely from a special source, which source does not involve revenues from any tax or license, may be issued by a county upon such terms and conditions as the General Assembly may prescribe by general law.

C. The Act empowers a county that receives and retains revenues pursuant to the Park Act to issue special source revenue bonds secured by and payable from all or a part of such revenues, subject to certain terms and conditions as provided therein, for the purpose of defraying a portion of the cost of designing, acquiring, constructing, improving or expanding infrastructure serving the County or a project, and improved or unimproved real estate used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the County and the Cost of Issuance of any Series of Bonds.

D. In Horry County School District v. Horry County, 552 S.E.2d 737 (S.C. 2001), the Supreme Court of South Carolina upheld the constitutionality of the Park Act, and held that counties that receive and retain revenues from joint county industrial and business parks created pursuant to the Park Act have the discretionary authority to allocate such revenues to the extent permitted by the Park Act.

E. The County has determined that there is a need to design, acquire, construct, improve and expand infrastructure serving the County or particular projects, from time to time, and improved or unimproved real estate used in the operation of manufacturing or commercial enterprises in order to enhance the economic development of the County.

F. The Bonds are to be issued under and pursuant to the provisions of the Act and the Park Act, and are to be secured by and payable solely from the Pledged Revenues.

G. The County has entered into various Park Agreements with Partner Counties to develop Joint County Industrial and Business Parks, and may continue to do so. Further, the County may continue to designate property located within the County as part of any existing Joint County Industrial and Business Park. Pursuant to the Park Agreements and the Multi County Park Ordinances, the County receives and retains a portion of the Fee Payments paid by owners or lessors of properties physically located within the Joint County Industrial and Business Parks. The County hereby finds and determines that it is proper to utilize such moneys received and retained by the County to finance the Costs of Acquisition and Construction of the Projects and to secure payment of the Bonds provided for hereunder and in any Supplemental Ordinance.

II. The County hereby finds and determines that it is necessary and proper to direct that the following amounts be deposited into the Revenue Fund established herein and be made available to pay for costs of infrastructure for economic development in the County, including payment of Debt Service on Bonds; (a) 100% of the Fee Payments paid by or on behalf of the owners or lessees of property located in the Joint County Industrial and Business Park established pursuant to the Highpointe/PointeWest Park Agreement, calculated after payment of any Multi-County Fees due to the Partner County under the terms of the Highpointe/PointeWest Park Agreement; and (b) with respect to any property located in the County and in any Joint County Industrial and Business Park (exclusive of any property located in the Highpointe/PointeWest Park) the product of fifteen percent (15%) of the Fee Payments paid by or on behalf of owners or lessees of such property, calculated prior to the payment of any Other Obligations and Special Source Credits and after payment of any Multi-County Fees due to a Partner County under the terms of the respective Park Agreements.

I. By the enactment of this Ordinance, the County intends to provide for the issuance of special source revenue bonds at the time and on the terms and conditions set forth in this Ordinance and Supplemental Ordinances hereto.

[Remainder of page intentionally left blank]

ARTICLE III

AUTHORIZATION AND ISSUANCE OF BONDS

Section 3.1. Authorization of Bonds. There is hereby authorized to be issued Bonds of the County to be designated "Oconee County, South Carolina, Special Source Revenue Bonds" or such other designations as may be provided in the Supplemental Ordinance authorizing such Bonds, which Bonds may be issued pursuant to this Ordinance and in accordance with the terms, conditions and limitations set forth herein; in Series; and in such amounts and from time to time as the County may deem to be necessary or advisable for any corporate purpose of the County for which Bonds may be issued under this Ordinance and the Act.

Section 3.2. General Provisions for Issuance of Bonds.

(a) The Bonds shall be issued in Series by means of Supplemental Ordinances enacted by the Council in accordance with the provisions of this Article and Article IX hereof. Each Supplemental Ordinance shall designate the Bonds provided thereby with an appropriate Series designation and with such further particular designations, if any, as the County deems appropriate. Each Supplemental Ordinance shall, unless or except as is otherwise set forth herein, also specify: (i) the authorized principal amount and designation of such Series of Bonds; (ii) the purpose or purposes for which the Bonds of such Series are being issued, which shall be one or more of the purposes set forth in Sections 3.3 or 3.4 hereof; (iii) if the Bonds of the Series are being issued for a purpose specified in Section 3.3 hereof, the Project(s) for which such Bonds are being issued; (iv) an estimate of the Costs of Acquisition and Construction for any Project(s), if any, to be financed by such Series of Bonds; (v) the date or dates of the Bonds of the Series; (vi) the maturity date or dates of the Bonds of the Series and the sinking fund installment amounts and due dates for the Term Bonds of the Series, if any; (vii) the interest rate or rates of the Bonds of such Series, or the manner of determining such rate or rates, the initial Interest Payment Date therefor, and the subsequent Interest Payment Dates; (viii) the denominations of (if other than as provided in this Ordinance), and manner of numbering and lettering, the Bonds of such Series; (ix) the redemption premium or premiums, if any, or the redemption price or prices to be paid upon the redemption of the Bonds of such Series, the period or periods, if any, during which such premiums or prices shall be payable, and the terms and conditions, if any, of such redemption; (x) the place or places of payment of the Bonds of the Series and interest thereon, and the Paying Agent and Registrar therefor and any Custodian of the funds and accounts created with respect thereto; (xi) the provisions for the sale or other disposition of the Bonds of the Series and the use, application and investment, if any, of the proceeds of such sale or other disposition, which use, application and investment shall not be inconsistent or in conflict with the provisions hereof; (xii) whether such Series of Bonds will be subject to a Reserve Fund Requirement and the manner of satisfaction of such Reserve Fund Requirement; (xiii) any other provisions which may be required to be inserted therein by other provisions of this Ordinance; and (xiv) any other necessary or desirable provisions not inconsistent or in conflict with the provisions of this Ordinance.

(b) Bonds of a Series may be executed and delivered to the Registrar by the County and authenticated and delivered to the County or, upon its order, upon compliance with Section 3.3 or Section 3.4 hereof.

Bonds issued upon compliance with this Section 3.2 and Section 3.3 or Section 3.4 hereof shall be issued on a parity with the pledge of and lien upon the Pledged Revenues inter sese, but not with respect to the particular Debt Service Fund or Debt Service Reserve Fund created for the benefit of the Holders of the Bonds of a Series, notwithstanding, that they may be in different form, and bear different dates, interest rates, number, date of issuance or date of execution or are payable at different times. In all such instances, the pledge of Pledged Revenues made hereunder, and the covenants and remedies hereby granted, shall be applicable and available to the Holders of such Bonds.

Section 3.3. Conditions for the Issuance of Bonds under this Ordinance Other than Refunding Bonds.

Any time and from time to time, one or more Series of Bonds (exclusive of refunding Bonds) may be issued for such purposes as may be permitted by the Act upon compliance with the provisions of Section 3.2 hereof and this Section 3.3 in such principal amounts as may be determined by the Council for the purpose of paying all or part of the Costs of Acquisition and Construction of one or more Projects upon compliance with the following conditions:

A. There shall be executed and filed with the Trustee a certificate of an Authorized County Representative stating (i) either (a) that no Default exists in the payment of the principal of, premium, if any, or interest on any Bonds or Junior Bonds, and all mandatory sinking fund redemptions, if any, required to have been made shall have been made, or (b) that the application of the proceeds of sale of the Series of Bonds to be issued as required by the Supplemental Ordinance authorizing their issuance will cure any such Default or permit such redemptions; and (ii) either (a) that to the best of his or her knowledge, the County is not in Default in the performance of any other of its covenants and agreements contained in this Ordinance, or (b) setting forth the circumstances of each such Default known to him or her.

B. If a certificate filed pursuant to part (A) of this Section 3.3 should disclose a Default or Defaults hereunder, there shall be filed with the County an opinion of Bond Counsel that, in the case of any Default disclosed in a certificate filed pursuant to part (A) of this Section 3.3, each such Default does not deprive the Bondholders of the security afforded by this Ordinance in any material aspect.

C. For the issuance of Bonds (other than the Bond of 2010 issued under this Ordinance and the First Supplemental Ordinance) to finance the Costs of Acquisition and Construction, or a portion thereof, of any Project, there shall be delivered a certificate of an Authorized County Representative certifying that the amount of the Pledged Revenues received by the County during the Fiscal Year preceding the issuance of any Series of Bonds is not less than 120% of the Maximum Debt Service on Bonds then Outstanding and the Bonds then proposed to be issued.

D. Such Bonds shall be issued to secure funds to defray the Costs of Acquisition and Construction of a Project, or to refund Junior Bonds, or any notes, bonds, or other obligations issued to finance or to aid in financing the acquisition or construction of a Project.

E. The Supplemental Ordinance may provide for a deposit into the Debt Service Reserve Fund with respect to such Series of Bonds of cash or securities or an insurance policy, surety bond or letter of credit, as provided in Section 6.7 hereof (inclusive of any proceeds of such Series of Bonds to be deposited in the applicable Debt Service Reserve Fund) having an aggregate value not less than the Reserve Fund Requirement, if any, with respect to such Series of Bonds.

Section 3.4. Refunding Bonds. Without complying with the provisions of Section 3.3 hereof except as otherwise provided herein, the County by means of a Supplemental Ordinance enacted in compliance with the provisions of the Act and any other statutory provisions authorizing the issuance of revenue refunding bonds, including advance refunding bonds, may issue hereunder refunding Bonds as follows:

A. Bonds may be issued for the purpose of refunding (including by purchase) at any time within one year prior to maturity or prior to any sinking fund installment due date, the Bonds maturing on such date (or an amount of such Bonds subject to redemption from such sinking fund installments not in excess of the amount of such Bonds required to be redeemed on such due date) for the payment of which sufficient Pledged Revenues are not available. Any Bonds issued for such purpose shall mature (or sinking fund installments therefor shall commence) not earlier than the latest stated maturity of the Bonds not then refunded to be Outstanding after such refunding; or

B. Bonds may be issued at any time for the purpose of refunding (including by purchase) other Bonds, including amounts to pay principal, redemption premium and interest to the date of redemption (or purchase) of the refunded Bonds and the Costs of Issuance and the funding of a Debt Service Reserve Fund thereunder; provided that (i) the aggregate Debt Service on all Bonds to be Outstanding after the issuance of the proposed Series of refunding Bonds shall not be greater than would have been the aggregate Debt Service of all Bonds not then refunded and the Bonds to be refunded; or (ii) the requirements of parts (A), (B), (C) and (E) of Section 3.3 hereof are met with respect to the refunding Series.

Section 3.5. Junior Bonds. The County may at any time issue Junior Bonds in such amount as it may from time to time determine, payable from the Pledged Revenues, provided that such Junior Bonds are issued to secure funds to defray the Costs of Acquisition and Construction or Costs of Issuance for Projects, or to refund Bonds, Junior Bonds, or any notes, bonds, or other evidences of indebtedness issued to finance or to aid in financing the acquisition or construction of the Projects, and provided further that the pledge of and lien on Pledged Revenues securing Junior Bonds shall at all times be subordinate and inferior to the pledges of and lien on Pledged Revenues securing the Bonds.

[Remainder of page intentionally left blank]

ARTICLE IV

THE BONDS

Section 4.1. Execution. Unless or except as is otherwise set forth in the Supplemental Ordinance providing for the issuance of a Series of Bonds, the Bonds shall be executed on behalf of the County by the Chairman of the County Council by his or her manual or facsimile signature and the corporate seal of the County or a facsimile thereof shall be impressed or reproduced thereon and attested by the Clerk to the County Council by his or her manual or facsimile signature.

In case any officer whose signature or facsimile signature shall appear on the Bonds shall cease to be such officer before the delivery of such Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, as if he had remained in office until delivery.

Section 4.2. Authentication. Unless or except as is otherwise set forth in the Supplemental Ordinance providing for the issuance of a Series of Bonds, upon compliance with the provisions of Sections 3.2, 3.3 or 3.4 hereof, and upon the order of the County, the Registrar shall authenticate Bonds authorized to be issued hereunder. Only such Bonds as shall have endorsed thereon a certificate of authentication, duly executed manually by the Registrar shall be entitled to any right or benefit under this Ordinance. No Bond shall be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly executed by the Registrar, and such executed certificate of the Registrar upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered. The Registrar's certificate of authentication on any Bond shall be deemed to have been executed by it if signed by an authorized officer of the Registrar, but it shall not be necessary that the same person sign the certificate of authentication on all of the Bonds issued hereunder or on all of the Bonds of a particular Series. The Registrar's certificate of authentication shall be in substantially the following form:

FORM OF REGISTRAR'S CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds described in the within-mentioned Ordinance of Oconee County, South Carolina.

Registrar

Dated: _____

By: _____
Authorized Officer

Section 4.3. Registration and Transfer of Bonds: Persons Treated as Holders. Unless and except as is otherwise set forth in the Supplemental Ordinance providing for the issuance of a Series of Bonds, each Bond shall be fully registered and transferable only upon the registration books (the "Books of Registry") of the County, which shall be kept for that purpose at the office of the Registrar, by the Holder thereof or by his attorney, duly authorized in writing, upon

surrender thereof, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the Holder or his or her duly authorized attorney with such signature guaranteed by a participant in the Securities Transfer Agents in Medallion Program ("STAMP") or similar program. Upon the transfer of any Bond, the County shall issue, subject to the provisions of Section 4.6 hereof, in the name of the transferee, a new Bond or Bonds of the same series and of the same aggregate principal amount, interest rate and maturity as the unpaid principal amount of the surrendered Bond.

Any Bondholder requesting any transfer shall pay any tax or other governmental charge required to be paid with respect thereto. As to any Bond, the person in whose name the same shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes and payment of or on account of the principal, redemption premium, if any, and interest on any Bond shall be made only to or upon the order of the Bondholder thereof, or his duly authorized attorney, and neither the County nor the Registrar, shall be affected by any notice to the contrary, but such registration may be changed as herein provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

Section 4.4. Form of Bonds; Denominations; Medium of Payment. Unless or except as is otherwise provided in the Supplemental Ordinance authorizing their issuance, the Bonds of each Series: (a) shall be in fully registered form without coupons, provided, such Bonds may be issued in book-entry form; (b) shall be issued in denominations of \$5,000, or any integral multiple thereof, provided that, upon partial redemption of a Bond requiring surrender thereof and the issuance of a new Bond, such new Bond may be in the denomination of the unredeemed balance; and (c) shall be payable with respect to principal, interest, and premium, if any, in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

Section 4.5. Numbers, Date, and Payment Provisions.

(a) The Bonds shall be numbered and designated in such manner as the County, with the concurrence of the Registrar, shall determine. Each Bond of a Series shall bear interest from the Interest Payment Date immediately preceding the date of its authentication, unless authentication shall be upon an Interest Payment Date, in which case it shall bear interest from its authentication, or unless authentication shall precede the first Interest Payment Date for such Bond, in which case it shall bear interest as otherwise provided in the Supplemental Ordinance authorizing its issuance, provided, however, that if the date of authentication of any Bond of any Series is after a Record Date and before the corresponding Interest Payment Date therefor, such Bond shall bear interest from such succeeding Interest Payment Date; notwithstanding the foregoing, if at the time of authentication of any Bond any interest on such Bond is in default, such Bond shall bear interest from the date to which interest on such Bond has been paid or if no interest has been paid, such Bond shall bear interest from the date of delivery thereof or from its dated date, or as otherwise provided in the Supplemental Ordinance authorizing the issuance of such Bonds.

(b) The principal of and redemption premium, if any, on the Bonds shall be payable when due in lawful money of the United States of America upon presentation and surrender of such Bonds at the principal office of the Paying Agent described in the Supplemental Ordinance

authorizing the issuance of such Bonds. Except as otherwise provided in a Supplemental Ordinance, payment of interest on Bonds shall be made by check or draft drawn upon the Paying Agent and mailed to the Holder at his or her address as it appears upon the Books of Registry. The Paying Agent shall maintain a record of the amount and date of any payment of principal and/or interest on the Bonds (whether at the maturity date or the redemption date prior to the maturity or upon the maturity thereof by declaration or otherwise).

Section 4.6. Exchange of Bonds. Unless or except as is otherwise provided in the Supplemental Ordinance authorizing their issuance, Bonds, upon surrender thereof at the office of the Registrar with a written instrument of transfer satisfactory to the Registrar, duly executed by the Bondholder or his duly authorized attorney with such signature guaranteed by a participant in STAMP or similar program, may, at the option of the Bondholder thereof, and upon payment by such Bondholder of any charges which the Registrar may make as provided in Section 4.7, be exchanged for a principal amount of Bonds of the same Series and maturity of any other authorized denomination equal to the unpaid principal amount of surrendered Bonds.

Section 4.7. Regulations with Respect to Exchanges and Transfer. In all cases in which the privilege of exchanging or transferring Bonds is exercised, the County shall execute and the Registrar shall authenticate and deliver Bonds in accordance with the provisions of this Ordinance or such Supplemental Ordinance authorizing the issuance thereof. All Bonds surrendered in any such exchanges or transfers shall forthwith be canceled by the Registrar. There shall be no charge to the Bondholder for such exchange or transfer of Bonds except that the Registrar may make a charge sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such exchange or transfer. Neither the County nor the Registrar shall be required (a) to exchange or transfer Bonds (i) from the Record Date to the succeeding Interest Payment Date or (ii) for a period of 15 days following any selection of Bonds to be redeemed or thereafter until after the first publication or mailing of any notice of redemption, or (b) to transfer any Bonds called for redemption.

Section 4.8. Temporary Bonds. Any Series of Bonds may be initially issued in temporary form, exchangeable for definitive Bonds to be delivered as soon as practicable and subject to the agreement of the County and the purchaser thereof. The temporary Bonds may be printed, lithographed or typewritten, shall be of such denominations as may be determined by the County, shall be without coupons, and may contain such reference to any of the provisions of this Ordinance as may be appropriate. Every temporary Bond shall be executed by the County upon the same conditions and in substantially the same manner as the definitive Bonds. If the County issues temporary Bonds, it will execute and furnish definitive Bonds without delay; and thereupon the temporary Bonds shall be surrendered for cancellation at the principal office of the Registrar, and the Registrar shall deliver and exchange for such temporary Bonds an equal, aggregate principal amount of definitive Bonds of like aggregate principal amount and in authorized denominations of the same Series, maturity or maturities and interest rate or rates. Until so exchanged, the temporary Bonds shall be entitled to the same benefits under this Ordinance as definitive Bonds under this Ordinance.

Section 4.9. Mutilated, Lost, Stolen or Destroyed Bonds. In case any Bond shall at any time become mutilated in whole or in part, or be lost, stolen or destroyed, or be so defaced as to impair the value thereof to the Holder, the County shall execute and the Registrar shall authenticate and deliver at the principal office of the Registrar, or send by registered mail to the

Holder thereof at his request, risk and expense a new Bond of the same series, interest rate and maturity and of like tenor and effect in exchange or substitution for and upon the surrender for cancellation of such defaced, mutilated or partly destroyed Bond, or in lieu of or in substitution for such lost, stolen or destroyed Bond. In any such event, the applicant for the issuance of a substitute Bond shall furnish the County and the Registrar (a) evidence or proof satisfactory to the County and the Registrar of the loss, destruction, mutilation, defacement or theft of the original Bond, and (b) of the ownership thereof, and (c) such security and indemnity as may be required by the laws of the State or such greater amount as may be required by the County and the Registrar. Any duplicate Bond issued under the provisions of this Section in exchange and substitution for any defaced, mutilated or partly destroyed Bond or in substitution for any allegedly lost, stolen or wholly destroyed Bond shall be entitled to the identical benefits under this Ordinance or any Supplemental Ordinance as was the original Bond in lieu of which such duplicate Bond is issued, and shall be entitled to equal and proportionate benefits with all the other Bonds of the same series issued hereunder. Neither the County nor the Registrar nor any Paying Agent shall be required to treat both the original Bond and any duplicate Bond as being Outstanding for the purpose of determining the principal amount of Bonds which may be issued hereunder or for the purpose of determining any percentage of Bonds Outstanding hereunder, but both the original and duplicate Bond shall be treated as one and the same. In the event any such mutilated, lost, stolen or destroyed Bond shall have matured, instead of issuing a duplicate Bond the County may pay the same. All expenses necessary for the providing of any duplicate Bond shall be borne by the applicant therefor.

[Remainder of page intentionally left blank]

ARTICLE V

REDEMPTION OF BONDS

Section 5.1. Redemption of Bonds. The Bonds of a Series may be subject to redemption prior to their stated maturities upon such terms and conditions and at such dates and redemption price or prices or premium or premiums as shall be set forth in the Supplemental Ordinance providing for the issuance of such Bonds, and upon the further terms and conditions as are hereinafter set forth.

Section 5.2. Selection of Bonds for Redemption. In the event of the redemption at any time of only part of the Bonds of a Series, the Bonds to be redeemed shall be redeemed in such order as is set forth in the Supplemental Ordinance providing for the issuance of such Bonds. Unless otherwise provided by Supplemental Ordinance, if less than all of the Bonds of like maturity of any Series shall be called for prior redemption, the particular Bonds or portions of Bonds to be redeemed shall be selected at random by the Registrar in such manner as the Registrar in its discretion may deem fair and appropriate; provided, however, that the portion of any Bond of a denomination of more than \$5,000 to be redeemed shall be in the principal amount of \$5,000 or an integral multiple thereof, and that, in selecting portions of such Bonds for redemption, the Registrar shall treat each such Bond as representing that number of Bonds of \$5,000 denomination which is obtained by dividing the principal amount of such Bond by \$5,000.

Section 5.3. Notice of Redemption. Unless or except as otherwise provided in the Supplemental Ordinance authorizing their issuance, the provisions of this Section 5.3 apply to each Series of Bonds.

In the event any of the Bonds or portions thereof are called for redemption, the Registrar shall give notice, in the name of the County, of redemption of Bonds by first-class mail, postage prepaid, to the Holder thereof as shown on the Books of Registry of the County not less than 30 days and not more than 60 days prior to the date fixed for the redemption thereof. Such notice of redemption shall state: (a) the title of such Bonds to be redeemed, CUSIP numbers, date of issue, the Series designation (if any) thereof, the redemption date, the place or places of redemption and the redemption price or redemption premium, if any, payable upon such redemption; (b) if less than all such Bonds of a particular Series are to be redeemed, the distinctive number of such Bonds to be redeemed; (c) that the interest on such Bonds designated for redemption in such notice shall cease to accrue from and after such redemption date; and (d) that on such date there will become due and payable on each such Bond the principal amount thereof to be redeemed at the then applicable redemption price or redemption premium, if any, and the interest accrued on such principal amount to the redemption date. Any notice mailed as provided in this Section shall be conclusively presumed to have been duly given, when mailed, whether or not the Holder thereof receives the notice. The notice shall further state that if money for the redemption of all the Bonds being redeemed at that time is held by the Trustee on the redemption date, interest shall cease to accrue on such Bonds on and after the redemption date. The notice may further state that the redemption of the Bonds being called for redemption is conditioned upon the Trustee receiving on or before the redemption date of sufficient money for the redemption thereof.

Section 5.4. Partial Redemption of Bond. In the event that only part of a Bond shall be called for redemption or prepaid, payment of the amount to be redeemed or prepaid shall be made only upon surrender of such Bond to the Registrar. Upon surrender of such Bond, the County shall execute and the Registrar shall authenticate and deliver to the Holder thereof, at the principal office of the Registrar, or send to such Holder by registered mail at his request, risk and expense, a new fully executed Bond or Bonds, of authorized principal sums equal in aggregate principal amount to, and of the same Series, maturity and interest rate as, the unredeemed portion of the Bond surrendered.

Section 5.5. Effect of Redemption. If a Bond is subject by its terms to redemption prior to its stated maturity and has been duly called for redemption and notice of the redemption thereof has been duly given as hereinbefore provided and if moneys for the payment of such Bond at the then applicable redemption price or together with the then applicable redemption premium, if any, and the interest to accrue to the redemption date on such Bond are held for the purpose of such payment by the Trustee for the Series of Bonds of which such Bond is one, then such Bond so called for redemption shall, on the redemption date designated in such notice, become due and payable. Interest on the Bond so called for redemption shall cease to accrue.

Section 5.6. Cancellation. All Bonds which have been redeemed shall be canceled and either maintained or destroyed by the Registrar and shall not be reissued. A counterpart of the certificate of destruction evidencing such destruction shall be furnished by the Registrar to the County upon the request of the County.

[Remainder of page intentionally left blank]

ARTICLE VI
ESTABLISHMENT OF FUNDS;
SECURITY FOR AND PAYMENT OF THE BONDS;
INVESTMENT OF MONEYS

Section 6.1. Listing of Funds and Accounts. The following are the funds and accounts created and established by this Ordinance:

- (i) Revenue Fund to be held by the County or a bank or other financial institution designated from time to time by the County.
- (ii) Debt Service Fund for each Series of Bonds to be held by the Trustee, including, except as provided in a Supplemental Ordinance, an Interest Account, a Principal Account and a Bond Redemption Account.
- (iii) Debt Service Reserve Fund for each Series of Bonds, if any, to be held by the Trustee.
- (iv) Construction Fund for each Series of Bonds, if any, to be held by a Custodian designated by the County.

One or more accounts may, by direction of the County or by the terms of a Supplemental Ordinance, be established within any of the above funds. It is intended by this Ordinance that the funds and accounts referred to in this Article (other than the Construction Fund) shall remain in existence for so long a time as any sum remains due and payable by way of principal of and interest on the Bonds, and that deposits and withdrawals therefrom be made in the manner herein prescribed and in the order of priority hereinafter set forth in Section 6.2 hereof. Upon the issuance of any Junior Bonds, the Trustee shall then establish in a Supplemental Ordinance a Junior Bond Debt Service Fund. Any debt service due on Junior Bonds shall be paid after all payments have been made with respect to the Debt Service Fund and Debt Service Reserve Fund.

Section 6.2. Disposition of Pledged Revenues. So long as any Bonds are Outstanding, the Pledged Revenues shall be applied at the times, in the amounts and for the purposes as provided or permitted by this Ordinance, and in the following order of priority:

First, provision shall be made for the payment of the principal of and interest on any Bonds then Outstanding, and there shall be transferred into the respective Debt Service Funds the amounts required by this Ordinance or any Supplemental Ordinance;

Second, there shall be transferred into the respective Debt Service Reserve Funds, if established, the amounts (including any payments required under the terms of any surety bond, insurance policy or letter of credit applicable thereto) required by this Ordinance or any Supplemental Ordinance for any Bond issued hereunder or thereunder;

Third, provision shall be made for payment of interest on amounts advanced by the provider of any surety bond, line of credit, insurance policy or letter of credit as contemplated in Section 6.7 hereof;

Fourth, provision shall be made for the payment of any Junior Bonds;

Fifth, the remaining balance shall be transferred to the Treasurer of the County for further distribution to the Taxing Districts.

Section 6.3. Security for and Payment of the Bonds. Each Series of Bonds, together with the interest thereon, shall be payable solely from and secured equally and ratably by a pledge of the Pledged Revenues which shall be and hereby are irrevocably pledged to the payment of the principal of, redemption premium, if any, and interest on the Series of Bonds authorized by the Supplemental Ordinances; provided, however, that Junior Bonds shall be secured solely as provided in Section 3.5 hereto. Each Series of Bonds may be further secured by the proceeds of such Series of Bonds deposited into the Construction Fund established to defray the Costs of Acquisition and Construction. A Series of Bonds issued to finance the acquisition of real or personal property may be additionally secured by a mortgage of that real or personal property, as specified in the Supplemental Ordinance.

To the extent that *ad valorem* taxes, prior to the conversion to Fee Payments pursuant to a Park Agreement, have been pledged to secure general obligation indebtedness of a political subdivision (which has taxing power within the applicable Joint County Industrial and Business Park) prior to the establishment of such Joint County Industrial and Business Park, such Fee Payments attributable to any real property and improvements thereon existing prior to the date of the Park Agreement shall first be applied, to the extent necessary, to the payment of such outstanding general obligation indebtedness.

To the extent such Fee Payments, prior to the date of enactment of this Ordinance, have been pledged or are hereafter pledged to the payment of Other Obligations or applied to any Special Source Credit, such Fee Payments shall first be applied, to the extent necessary, to the payment of such Other Obligations or applied to any Special Source Credit.

The Bonds, and the interest thereon are, (a) payable solely from all or a specifically described portion of the Pledged Revenues; (b) not secured by, or in any way entitled to, a pledge of the full faith, credit, or taxing power of the County; (c) not an indebtedness of the County within the meaning of any state constitutional provision or statutory limitation but are payable solely from a special source that does not include revenues from any tax or license; and (d) not a pecuniary liability of the County or a charge against the County's general credit or taxing power.

All funds held by the Trustee in the respective Debt Service Funds and Debt Service Reserve Funds are hereby pledged for the benefit of the respective Bondholders as security for the Bonds of the Series to which such funds relate. The Pledged Revenues shall be and hereby

are irrevocably pledged to the payment of the principal of, redemption premium, if any, and interest on the Bonds. This provision of this Section 6.3 shall not preclude the issuance of Junior Bonds if such Junior Bonds be issued in conformity with the provisions of Section 3.5 hereof, but the pledge herein made shall preclude the issuance of bonds payable from or secured by a pledge of or lien on the Pledged Revenues superior to that herein made to secure the Bonds.

The covenants and agreements herein set forth to be performed by the County shall be for the equal and proportionate benefit, security and protection of all Holders of the Bonds without preference, priority or distinction as to payment or security or otherwise (except as to maturity) of any of the Bonds for any reason or cause whatsoever, except as expressly provided by the pledging of Pledged Revenues herein or by Supplemental Ordinance for each of such series of Bonds. Except as aforesaid, all Bonds shall rank *pari passu* and shall be secured equally and ratably hereunder without discrimination or preference whatsoever.

Section 6.4. Accounting Methods. The designation of the Revenue Fund in and by this Ordinance shall not be construed to require the establishment of any completely independent, self-balancing funds as such term is commonly defined and used in governmental accounting, but rather is intended solely to constitute an earmarking of the Pledged Revenues for certain purposes and to establish certain priorities for application of such Pledged Revenues as herein provided.

The cash required to be accounted for in each of the foregoing funds established herein may be deposited in a single bank account, provided that adequate accounting records are maintained to reflect and control the restricted allocation of the cash in and deposited therein for the various purposes of such funds as provided herein.

Section 6.5. Revenue Fund. There is hereby established a Revenue Fund to be maintained in trust by the County in a bank or other financial institution designated, from time to time, by the County and into which shall be deposited all Pledged Revenues. Moneys in the Revenue Fund shall be used only in the manner specified in this Article VI and in the order of priority set forth in Section 6.2 hereof. Moneys held in the Revenue Fund may be invested, from time to time, in Permitted Investments; provided, however, that such Pledged Revenues in the Revenue Fund shall be made available to the Trustee on the fifth (5th) Business Day prior to each Interest Payment Date in amounts sufficient to make all transfers required to be made from the Revenue Fund by this Article VI and each Supplemental Ordinance.

Section 6.6. Debt Service Funds. There shall be established and maintained special funds of the County to be designated the Debt Service Fund for each Series of Bonds then Outstanding which shall be kept on deposit with the Trustee, and withdrawals therefrom shall be made for the purposes provided in this Ordinance or any Supplemental Ordinance. Each Debt Service Fund shall bear a separate series designation as may be necessary to distinguish such Debt Service Fund.

The respective Debt Service Funds are intended to provide for the payment of the principal of, redemption premium, if any, and interest on each Series of Bonds as the same respectively fall due. Payments into such funds shall be made in the manner prescribed by this Ordinance, and all moneys in the respective Debt Service Funds shall be used solely to pay the principal of, redemption premium, if any, and interest on the respective Series of Bonds, and for

no other purpose, and withdrawals therefrom shall be made only to effect payment of the principal of, redemption premium, if any, and interest on the respective Series of Bonds. Earnings on investments in the Debt Service Funds, including the accounts therein, shall be added to and become a part of such respective funds and the accounts therein.

There may be established in the respective Debt Service Funds from time to time a capitalized interest account to provide for the payment of interest on the Bonds of a particular Series as may be permitted hereunder. Any such account shall be created by a Supplemental Ordinance relating to the issuance of the Bonds of such Series. Any earnings from the investment of funds in the capitalized interest account not required to pay interest on the Bonds of any Series during the period for which interest on the Bonds of such Series is capitalized may be deposited in the Construction Fund created by the Supplemental Ordinance relating to such Bonds or, if such Construction Fund has been terminated or no such fund was created, such earnings shall be retained in the appropriate Debt Service Fund.

Unless and except as is otherwise set forth in a Supplemental Ordinance, not later than the fifth (5th) Business Day prior to each Interest Payment Date or Principal Payment Date, as the case may be, the County shall transfer or cause to be transferred to the Trustee from the Pledged Revenues in the Revenue Fund for deposit into the respective Debt Service Funds and ratably with respect to separate Series of Bonds for credit to the Interest Account, the Principal Account or the Bond Redemption Account, as the case may be, sufficient moneys so as to comply with the following provisions for the payment of the Bonds then Outstanding.

(a) There shall be established and maintained, for the purpose of paying the interest on the respective Series of Bonds as the same becomes due and payable, an Interest Account in the respective Debt Service Funds. In making any of the deposits to the Interest Account required by this paragraph (a), consideration shall be given to and allowance made for accrued interest received upon delivery of each Series of Bonds to the initial purchasers and for any other credits (including but not limited to capitalized interest with respect to each Series of Bonds) otherwise made to such Interest Account.

(b) There shall be established and maintained, for the purpose of paying the principal of the respective Series of Bonds as they mature, a Principal Account in the respective Debt Service Funds. In making any of the deposits to the Principal Account required by this paragraph (b), consideration shall be given to and allowance made for any other credits otherwise made to such Principal Account.

(c) There shall be established and maintained, in order to meet the specified sinking fund installment requirements of Term Bonds and to otherwise retire Term Bonds prior to maturity, a Bond Redemption Account in the respective Debt Service Fund. The Trustee shall apply the moneys credited to the Bond Redemption Account as sinking fund installments to the retirement of the Term Bonds of each respective Series by redemption in accordance with the Supplemental Ordinance providing for the issuance of such Series of Bonds, without further authorization or direction, on each date upon which a sinking fund installment is due with respect to the Term Bonds of such Series. The Trustee shall keep and retain accurate records of application of each deposit of funds under this paragraph (c). The Trustee shall give notice of all such redemptions in the name and on the behalf of the County in accordance with the provisions of Article V hereof. In making any of the deposits to the Bond Redemption Account required by this paragraph (c), consideration shall be given to and allowance made for any other credits otherwise made to such Bond Redemption Account.

(d) If, on the dates when the payments required by paragraphs (a), (b) and (c) of this Section are to be made, the aggregate of (i) the payments actually made pursuant to said paragraphs (a), (b) and (c), and (ii) the remaining payments to be made prior to the next succeeding date on which principal or interest, or both, as the case may be, will be due and payable, are less than the sum required to be transferred to a Debt Service Fund to effect the payment of the succeeding installment of principal or interest, or both, as the case may be, moneys in the applicable Debt Service Reserve Fund, if any, equal to such deficiency shall be added to the payment to be made pursuant to said paragraphs (a), (b) and (c).

Moneys in the respective Debt Service Funds shall be used and applied solely to the payment of the interest on and the retirement of the principal of and redemption premium, if any, on the respective Series of Bonds and shall be used and applied in accordance with the provisions of this Section 6.6 and this Ordinance. The moneys paid into the respective Debt Service Fund shall be held by the Trustee in trust solely for the purpose of paying the interest on and the retirement of the principal of and redemption premium, if any, on the respective Series of Bonds. Withdrawals from such funds shall be made by the Trustee in order to transfer such moneys to the Paying Agent for the respective Series of Bonds. Such withdrawals shall be made so that the necessary moneys shall be available to the Paying Agent not later than one Business Day prior to the day on which principal or interest or both, and redemption premium, if any, as the case may be, are payable on the Bonds.

Section 6.7. Debt Service Reserve Funds. A Supplemental Ordinance may provide for the establishment of a Debt Service Reserve Fund for any Series of Bonds. Each Debt Service Reserve Fund shall bear a separate Series designation as may be necessary to distinguish such Debt Service Reserve Fund and shall, subject to certain provisions of this Ordinance, be maintained in an amount equal to the applicable Reserve Fund Requirement, as determined pursuant to a Supplemental Ordinance, and in the manner determined pursuant to such Supplemental Ordinance, so long as the applicable Series of Bonds shall be Outstanding. Each such fund is intended to insure the timely payment of the principal of and interest on the applicable Series of Bonds and to provide for the redemption of such Series of Bonds prior to their stated maturities. The respective Debt Service Reserve Funds shall be kept on deposit with the Trustee, and withdrawals therefrom shall be made for the purposes provided in this Ordinance.

Moneys in each Debt Service Reserve Fund shall be used for the following purposes and for no other:

- (a) To prevent a Default in the payment of the principal of or interest on the applicable Series of Bonds, by reason of the fact that moneys in the applicable Debt Service Fund are insufficient for such purposes;
- (b) To pay the principal of, interest on, and redemption premium, if any, of the applicable Series of Bonds in the event that all Outstanding Bonds of such Series be redeemed as a whole;
- (c) To effect a partial redemption of the applicable Series of Bonds, provided that such redemption be undertaken in accordance with the provisions of this Ordinance permitting a partial redemption of the applicable Series of Bonds and the balance remaining in the applicable Debt Service Reserve Fund following such partial redemption shall not be less than the Reserve Fund Requirement; and
- (d) To effect the retirement of a Series of Bonds through purchase under the conditions herein prescribed.

Whenever the value (determined as of the valuation date and in accordance with the method specified in Section 6.10 hereof) of the cash and securities in the applicable Debt Service Reserve Fund shall exceed the Reserve Fund Requirement, such excess may, at the written direction of the County (i) be used to repurchase and retire the applicable Series of Bonds at prices not exceeding the call price first to become available or then prevailing, (ii) be deposited as the County deems advisable or (iii) be transferred to the Construction Fund during the period of construction or acquisition of a Project. Purchases of Bonds shall be effected by the County through the Trustee, and whenever Bonds shall have been purchased pursuant to this authorization, it shall be the duty of the Trustee to cancel and destroy such Bonds and to deliver certificates evidencing such act to the County.

Whenever the value (determined as of the valuation date and in accordance with the method specified in Section 6.10 hereof) of cash and securities in the respective Debt Service Reserve Fund shall be less than the applicable Reserve Fund Requirement, there shall be deposited from available Pledged Revenues into the applicable Debt Service Reserve Fund over the next succeeding twelve (12) months, successive equal monthly installments of the amount necessary to re-establish in the applicable Debt Service Reserve Fund its respective Reserve Fund Requirement.

In lieu of the deposit of moneys into the Debt Service Reserve Fund established with respect to any Series of Bonds to meet the Reserve Fund Requirement with respect to that Series, the County may cause to be credited a surety bond or an insurance policy payable to, or a letter of credit in favor of, the Trustee for the benefit of the Holders of the Bonds meeting the standard set forth in the Supplemental Ordinance authorizing that Series of Bonds, as the case may be. The amount of moneys required to be deposited to the Debt Service Reserve Fund shall be reduced by the amount of the surety bond, insurance policy, or letter of credit. The surety bond, insurance policy, or letter of credit shall be payable (upon the giving of notice as required thereunder) on any Interest Payment Date on which moneys will be required to be withdrawn

from the Debt Service Reserve Fund and applied to the payment of the principal of or interest on any Bonds of that Series but only to the extent that withdrawals cannot be made by amounts then credited to the Debt Service Reserve Fund.

If the County obtains a surety bond, insurance policy or letter of credit in substitution for moneys deposited to the applicable Debt Service Reserve Fund as may be permitted under the applicable Supplemental Ordinance, excess moneys in the respective Debt Service Reserve Funds shall be transferred to the applicable Construction Fund, or if one does not exist, be deposited as the County deems advisable.

Section 6.8. Distribution of Remaining Pledged Revenues.

In any Fiscal Year, after required deposits have been made into the Debt Service Fund, the Debt Service Reserve Fund, if any, and payment has been made on any Junior Bonds due in such Fiscal Year, there shall be transferred from the Revenue Fund to the Treasurer of the County the remaining balance of Pledged Revenues, if any. Within five Business Days of the Treasurer's receipt thereof, such moneys shall be distributed to the Taxing Districts proportionately based on the ratio which each respective Taxing District's millage rate bears to the combined millage rate of all Taxing Districts during the then current Fiscal Year. Any Authorized County Representative is authorized to direct that the remaining balance of Pledged Revenues in the Revenue Fund be transferred to the Treasurer of the County in accordance with this Section 6.8.

Section 6.9. Establishment of Construction Fund. There shall be established with the Custodian a Construction Fund with respect to each Series of Bonds (other than for Bonds issued pursuant to Section 3.4 hereof) in the Supplemental Ordinance providing for their issuance, the moneys in which shall be used to defray the costs of any Project and to pay any Costs of Acquisition and Construction with respect to the facilities so financed and Costs of Issuance. On the occasion of the delivery of any Series of Bonds (other than Bonds issued pursuant to Section 3.4 hereof), the proceeds therefrom shall be paid into the Construction Fund established for such Series as set forth in a Supplemental Ordinance authorizing their issue. Withdrawals from the Construction Fund shall not be made except as provided in the Supplemental Ordinance establishing such Construction Fund.

Section 6.10. Investment of Funds. Moneys held for the credit of the respective Debt Service Funds shall be invested, to the fullest extent practicable and reasonable, in Permitted Investments which shall mature prior to the respective dates when the moneys held for the credit of such fund will be required for the purpose intended. Moneys in the respective Debt Service Reserve Funds established by this Ordinance or a Supplemental Ordinance shall be invested, to the fullest extent practicable, in Permitted Investments. Moneys in any other funds established by this Ordinance shall be invested, to the fullest extent practicable, in Permitted Investments, maturing at such times and in such amounts as shall be required to provide moneys to make the payments required to be made from such funds. Investment instructions shall be given to the Trustee or to the Custodian, as the case may be, by an Authorized County Representative, provided such instructions which are given orally must be subsequently confirmed in writing.

The Trustee or other depository shall, not later than June 15 of each year, value as of the preceding June 1 or the succeeding Business Day thereafter, Permitted Investments in the various funds established by this Ordinance and held by the Trustee or other depository and shall forward such valuation to the County. The value of Permitted Investments (except investment agreements) shall be determined by the Trustee or other depository at the market value thereof, exclusive of accrued interest, provided, however, Permitted Investments in any Debt Service Reserve Fund shall be valued at cost if the maturity thereof is one year or less and shall be valued at market value and marked to market annually if the maturity thereof is longer than one (1) year. The Trustee shall not be accountable or liable for any depreciation in the value of any investments in any funds or for any losses incurred upon the disposition thereof.

The Trustee shall not be required to enter into any investment, forward delivery or similar agreement unless (a) such agreement is in form and content acceptable to the Trustee, and such agreement provides that the liability of the Trustee thereunder is limited to losses arising from the negligence of the Trustee, and (b) the County agrees to pay the Trustee a separate scheduled fee for its services provided under such agreement.

[Remainder of page intentionally left blank]

ARTICLE VII

COVENANTS

Section 7.1. To Pay Principal, Premium and Interest on the Bonds. The County covenants and agrees to punctually pay, or cause to be paid, out of the Pledged Revenues pledged to such payment in Article VI hereof and the Supplemental Ordinance, the principal of, redemption premium, if any, and the interest on each and every Bond issued under the provisions of this Ordinance at the place, on the dates, and in the manner provided herein.

Section 7.2. Joint County Industrial and Business Parks. The County shall promptly perform the duties and obligations imposed and assumed by it in accordance with the terms and provisions of any Park Agreements. The County shall make all reasonable efforts to enforce each of the Park Agreements in accordance with its respective terms and shall not terminate any Park Agreement or materially reduce the properties therein (unless such reduction is by operation of law) unless there shall first be provided to the Trustee a certificate executed by an Authorized County Representative stating: (a) that, after consideration of the reduction in the Pledged Revenues resulting from the termination of a Park Agreement or reduction of properties therein, the amount of Pledged Revenues, for the prior consecutive 12 month period would be not less than 120% of the Maximum Debt Service for any succeeding Fiscal Year of the Bonds then Outstanding hereunder; and (b) the amount of Pledged Revenues remaining after the termination of the Park Agreement or the reduction of properties therein is sufficient to pay Maximum Debt Service for any succeeding Fiscal Year of the Bonds then Outstanding hereunder.

Section 7.3. Records, Accounts and Audits. The County covenants and agrees to keep proper books of records and accounts (separate from all other records and accounts), in which complete and correct entries shall be made of all transactions relating to the Pledged Revenues. Such records shall be kept in accordance with the standards from time to time prescribed by the Governmental Accounting Standards Board or its successor. The County will cause to be furnished to any Holder of any of the Bonds who makes written request therefor copies of financial statements certified by an Accountant. The Trustee shall not be responsible for obtaining audits of the County.

Section 7.4. Other Obligations and Special Source Credits. Except as otherwise provided in this Ordinance, the County covenants and agrees not to issue any bonds, notes, certificates or other obligations or evidences of indebtedness other than the Bonds or obligations authorized or permitted hereby secured by a pledge of the Pledged Revenues; provided nothing in this Ordinance shall prevent or prohibit the County from issuing any Other Obligations or granting any Special Source Credits after the enactment of this Ordinance.

ARTICLE VIII

TRUSTEE; RESIGNATION OF TRUSTEE; LIABILITY OF TRUSTEE FOR INVESTMENTS; CUSTODIANS

Section 8.1. Trustee. The Council hereby designates U.S. Bank National Association as Trustee under this Ordinance.

On or prior to the delivery of the Bond of 2010, the Trustee shall signify its acceptance of the powers, duties and obligations conferred and imposed upon it by this Ordinance by executing and delivering to the County a written instrument of acceptance.

The Trustee shall (a) prior to the occurrence of an Event of Default as set forth in Article X hereof, and after the curing of all Events of Default which may have occurred, perform such duties and obligations as are specifically set forth in this Ordinance, and no implied covenants or obligations shall be read into this Ordinance against the Trustee, and (b) during the existence of any Event of Default of which the Trustee has actual notice (which has not been cured or waived) exercise the rights and powers vested in it by this Ordinance and use the same degree of care and skill in their exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

No provisions of this Ordinance shall be construed to relieve the Trustee from liability for its own negligence or intentionally wrongful action or failure to act.

At all times, (a) the Trustee shall not be liable for any error of judgment made in good faith by an officer or employee of the Trustee unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts; (b) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a majority (or such lesser percentage as is specifically required or permitted by this Ordinance) in the aggregate principal amount of the Bonds at the time Outstanding relating to the time, method and place of conducting a proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Ordinance; and (c) in the administration of the trusts of this Ordinance, the Trustee may execute any of the trusts or powers hereof directly or through its agents or attorneys and shall not be responsible for any misconduct or negligence of any such agent or attorneys. The Trustee may consult with counsel at the County's expense and the written opinion of such counsel addressed to the County and the Trustee shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance with the opinion of such counsel.

The Trustee may rely upon the authenticity and truth of the statements and the correctness of the opinions expressed in, and shall be protected in acting upon any notice, resolution, request, consent order, certificate, report, opinion, note, or other paper or document furnished to it pursuant to any provision of this Ordinance, believed by it to be genuine and to have been signed and presented by the proper party.

The Trustee shall not be required to take notice or be deemed to have notice or actual knowledge of any Event of Default specified in Article X hereof other than a payment default described in subparagraphs A or B of Section 10.1 unless the Trustee shall receive from the County or the Holders of 25% in principal amount of the Bonds then Outstanding written notice stating that an Event of Default hereunder has occurred and specifying the same, and, in the absence of such notice, the Trustee may conclusively assume that there is no such Event of Default.

The Trustee shall be entitled to payment of and reimbursement by the County for reasonable fees and expenses in accordance with its then applicable fee schedule for its services rendered hereunder and all advances and counsel fees reasonably and necessarily made or incurred by the Trustee in connection with such services. The obligations of the County to make the payments described in this Section 8.1 shall survive discharge of this Ordinance, the resignation and removal of the Trustee and payment in full of the Bonds.

The Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conformed to the requirements of this Ordinance.

No provision of this Ordinance or any Supplemental Ordinance shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it has reasonable grounds for believing that the repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

Any request, direction, order or demand of the County under this Ordinance shall be sufficiently evidenced by a written certificate of a Authorized County Representative (unless other evidence thereof is specifically prescribed) and any resolution of the Council may be sufficiently evidenced by a copy thereof certified by an Authorized County Representative.

Whenever in the administration of this Ordinance or any Supplemental Ordinance the Trustee deems it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence thereof is specifically prescribed) may rely upon a certificate of the Authorized County Representative.

The Trustee is not required to make any inquiry or investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, approval, bond, debenture or other paper or document; but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit and, if the Trustee determines to make such further inquiry or investigation, it is entitled to examine the books, records and premises of the County in person or by its agent or attorney.

The Trustee is not required to give any bond or surety with respect to the performance of its duties or the exercise of its powers under this Ordinance or any Supplemental Ordinance.

In the event the Trustee receives inconsistent or conflicting requests and indemnity from two or more groups of holders of Bonds, each representing less than a majority in aggregate principal amount of the Bonds Outstanding, pursuant to the provisions of this Ordinance or any Supplemental Ordinance, the Trustee, in its sole discretion, may determine what action, if any, shall be taken.

The Trustee's immunities and protections from liability and its right to indemnification in connection with the performance of its duties under this Ordinance or any Supplemental Ordinance shall extend to the Trustee's officers, directors, agents, attorneys and employees. Such immunities and protections and right to indemnification, together with the Trustee's right to compensation, shall survive the Trustee's resignation or removal, the discharge of this Ordinance and any Supplemental Ordinance and final payment of the Bonds.

The permissive right of the Trustee to take the actions permitted by this Ordinance and any Supplemental Ordinance shall not be construed as an obligation or duty to do so.

Except for information provided by the Trustee concerning the Trustee, the Trustee shall have no responsibility for any information in any offering memorandum or other disclosure material distributed with respect to the Bonds, and the Trustee shall have no responsibility for compliance with any state or federal securities laws in connection with the Bonds.

The recitals contained in this Ordinance and in the Bonds (other than the certificate of authentication on the Bonds) are statements of the County, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the value, condition or sufficiency of any assets pledged or assigned as security for the Bonds, the right, title or interest of the County therein, the security provided thereby or by this Ordinance, or the tax-exempt status of the Bonds. The Trustee is not accountable for the use or application by the County of any of the Bonds or the proceeds of the Bonds, or for the use or application of any moneys paid over by the Trustee in accordance with any provision of this Ordinance.

The Trustee, in its commercial banking or in any other capacity, may in good faith buy, sell, own, hold and deal in any of the Bonds and may join in any action which any Bondholder may be entitled to take with like effect as if it were not Trustee. The Trustee, in its commercial banking or in any other capacity, may also engage in or be interested in any financial or other transaction with the County and may act as depository, trustee or agent for any committee of Bondholders secured hereby or other obligations of the County as freely as if it were not Trustee. The provisions of this Section 8.1 shall extend to affiliates of the Trustee.

The Trustee shall not, in any event, be required to take, defend, or appear in any legal action or proceeding hereunder or to exercise any of the trusts or powers hereof unless it shall first be adequately indemnified to its satisfaction against the costs, expenses, and liabilities which may be incurred thereby. Every provision of this Ordinance relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions hereof.

To the extent permitted by law, the County hereby agrees to indemnify, defend and hold

the Trustee harmless from and against any loss, liability or expense incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of the office of Trustee under this Ordinance, including the costs of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

Section 8.2. Resignation of Trustee. The Trustee may resign at any time by giving thirty (30) days' written notice to the County and by giving notice to the Holders of the Bonds by publication of such resignation. Such notice shall be published at least once in a financial journal of general circulation published on each business day in each calendar week in the City of New York, New York. No resignation will become effective until a successor Trustee has been appointed and accepts such appointment as provided below. Upon receiving notice of resignation, the County shall promptly appoint such successor Trustee by an instrument in writing executed by order of its Council. In the event a successor Trustee has not been appointed within sixty (60) days of the date notice of resignation is given, the Trustee, at the County's expense, may apply to any court of competent jurisdiction for the appointment of a successor Trustee to act until such time as a successor is appointed as provided in this Section.

Section 8.3. Removal of Trustee. Upon thirty (30) days written notice, the County, at its sole discretion, provided that an Event of Default shall not have occurred and be continuing, may remove the Trustee. The removal of the Trustee under this Section 8.3 shall not be effective until a successor Trustee has been appointed and has accepted the duties of Trustee.

With or without cause, the Holders of a majority in aggregate principal amount of the Bonds at the time outstanding may, upon thirty (30) days written notice to the Trustee and the County, remove the Trustee and appoint a successor Trustee by instrument or instruments in writing signed by such Holders of the Bonds. In the event a successor Trustee has not been appointed within sixty (60) days of the date notice of removal is given, the Trustee, at the County's expense, may apply to any court of competent jurisdiction for the appointment of a successor Trustee to act until such time as a successor is appointed as provided in this Section 8.3.

Section 8.4. Successor Trustee. Unless otherwise ordered by a court or regulatory body having competent jurisdiction, or unless required by law, any successor Trustee shall, if there is such an institution willing, qualified and able to accept the trust upon reasonable or customary terms, be (i) a bank, or a wholly owned subsidiary of a bank holding company, having a combined capital, surplus and undivided profits of at least \$50,000,000; or (ii) a trust company having at least \$100,000,000 of trust assets under management and a combined capital, surplus and undivided profits of at least \$50,000,000 and, in each case, being qualified to do, and doing, trust business in the State.

Any successor Trustee appointed as provided in this section, shall execute, acknowledge and deliver to the County and its predecessor Trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts, duties and obligations of its predecessor of the trust hereunder. Upon the request of any such successor Trustee, the County shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and duties. Upon acceptance of appointment by a successor Trustee, the County shall notify the registered Holder of each Bond then Outstanding by first-class mail, postage prepaid.

The predecessor Trustee shall execute any and all documents necessary or appropriate to convey all interest it may have to the successor Trustee. The predecessor Trustee shall promptly transfer all funds to the successor Trustee and deliver all records relating to the trust or copies thereof and communicate all material information it may have obtained concerning the trust to the successor Trustee.

Any corporation or association into which the Trustee may be merged or with which it may be consolidated, or any corporation or association resulting from any merger, or any corporation or association succeeding to the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto.

Each, every and all funds and accounts held by the Trustee shall be impressed with a trust for the benefit of the Holders of the Bonds, under the provisions of this Ordinance and of the Act.

Section 8.5. Custodians. The Construction Fund shall at the option of the County be held by a bank, a trust company, a national banking association or a national association as Custodian under this Ordinance or a Supplemental Ordinance.

Section 8.6. Liability of Trustee for Investments. The Trustee and all Custodians shall not be liable for the making of any investment authorized by this Ordinance in the manner provided in this Ordinance or for any loss resulting from any such investment so made, except for its own negligence or willful misconduct. All investments shall be made in accordance with Section 6.12 of this Ordinance.

Section 8.7. Trustee and Custodians Protected in Relying upon Resolutions. The Trustee and all Custodians shall at all times be protected in acting upon any notice, resolution, request, consent, order, certificate, statement, opinion, bond, or other paper or document believed to be genuine and to have been signed by the proper party or parties.

[Remainder of page intentionally left blank]

ARTICLE IX

AMENDMENTS OR SUPPLEMENTS TO THIS ORDINANCE

Section 9.1. Amendments or Supplements to this Ordinance. The County shall not amend this Ordinance except in accordance with the provisions of this Article.

A. The County may, from time to time and without the consent of any Holder of the Bonds enact an ordinance amendatory hereof or supplemental hereto for the purpose of (a) providing for the issuance of Bonds pursuant to the provisions of Article III hereof, or (b) (i) making any amendments or modifications hereto which may be required to permit this Ordinance to be qualified under the Trust Indenture Act of 1939, as amended; (ii) making any modification or amendment to this Ordinance not inconsistent herewith required for the correction of language or to cure any ambiguity or defective provisions, omission, mistake or manifest error herein contained; (iii) making any amendments or supplements hereto to grant to or confer upon the Holders additional rights, remedies, power and authority, or to grant to or confer upon any Holders, committee or trustee for the Holders any additional rights, power or authority; or (iv) to add to the security of the Holders of the Bonds.

B. From time to time the Holders of 66-2/3% in principal amount of the Bonds then Outstanding, by an instrument or instruments in writing signed by such Holders and filed with the County and the Trustee, shall have power to assent to and authorize any modification or amendment to the provisions of this Ordinance that may be proposed by the County or of the rights and obligations of the County and of the Holders of Bonds issued hereunder. Any action herein authorized to be taken with the assent and authority given as aforesaid of the Holders of at least 66-2/3% in principal amount of the Bonds at the time Outstanding shall be effective and binding upon all of the Holders of Bonds issued hereunder; and any action herein authorized to be taken with the assent and authority given as aforesaid of the Holders of 66 2/3% in principal amount of the Bonds at the time Outstanding shall be effective and binding upon all of the Holders of Bonds Outstanding and upon the County as fully as though such action were specifically and expressly authorized by the terms of this Ordinance; provided always that without the consent of the Holder of each Bond affected thereby, no such modification shall be made which will (a) extend the time of payment of principal of or the interest on any Bond, or reduce the principal amount thereof or the rate of interest thereon or the premium payable upon the redemption thereof, or (b) give to any Bond or Bonds any preference over any other Bond or Bonds, or (c) authorize the creation of any pledge prior to or, except as provided herein for the issuance of Series of Bonds, on a parity with the pledge afforded by this Ordinance, or (d) reduce the percentage in principal amount of the Bonds required to assent to or authorize any such modification to this Ordinance. For the purpose of computations required by this paragraph, Bonds directly or indirectly owned or controlled by the County shall be disregarded.

Any modification or amendment or supplement to the provisions of this Ordinance or of any Supplemental Ordinance supplemental hereto shall be set forth in an ordinance to be enacted by the County.

No amendment or supplement which adversely affects the Trustee's rights, duties, obligations or responsibilities may be effected without the consent of the Trustee.

[Remainder of page intentionally left blank]

ARTICLE X

EVENTS OF DEFAULT

Section 10.1, Events of Default. With respect to the Bonds, the following shall constitute "Events of Default":

A. If payment of the principal of any Bond, whether at maturity or by proceedings for redemption, or upon mandatory sinking fund redemption, or by declaration as provided in Section 11.1 hereof, or otherwise, is not made by the County as the same becomes due and payable; or

B. If payment of any installment of interest on any Bond is not made by the County as the same becomes due and payable; or

C. If the County shall fail or refuse to comply with the essential provisions of the Act, or shall fail in the due and punctual performance of any of the covenants, conditions, agreements and provisions contained in the Bonds or in this Ordinance or in any Supplemental Ordinance on the part of the County to be performed, and such failure continues for sixty (60) days after written notice specifying such failure and requiring the same to be remedied has been given to the County by the Trustee, or the Holders of not less than 20% in principal amount of the Bonds then Outstanding or any trustee or committee therefor; or

D. If any proceedings are instituted, with the consent or acquiescence of the County, for the purpose of effecting a composition between the County and its creditors and if the claim of such creditors is in any circumstance payable from any of the Pledged Revenues or any other moneys pledged and charged in this Ordinance or any Supplemental Ordinance for the payment of the Bonds, or any such proceedings are instituted for the purpose of adjusting the claims of such creditors, pursuant to any federal or State statute now or hereafter enacted; or

E. If the County is for any reason rendered incapable of fulfilling its obligations hereunder in any material respect.

Subject to the provisions, limitations and conditions of Sections 11.1 and 11.2 hereof, insofar as the remedies provided in said provisions are concerned, nothing in Section 11.3 hereof or in this Article, and particularly nothing in subparagraph C of this Section 10.1, shall prohibit or limit, or be construed as prohibiting or limiting any Holder of a Bond from enforcing the duties of the County, or any of the officers thereof, under any provisions of this Ordinance (including, without limiting the generality of the foregoing, the duties imposed by or referred to in Section 11.3 hereof) by mandamus or other appropriate suit, action or proceeding in any court of competent jurisdiction, even though the failure of the County or any of the officers thereof to perform any such duty may not then constitute an "Event of Default" as defined in this Article.

[Remainder of page intentionally left blank]

ARTICLE XI

REMEDIES UPON EVENT OF DEFAULT

Section 11.1. Declaration of Principal and Interest as Due. Upon the occurrence of an Event of Default, and at any time thereafter while such Event of Default continues, then and in each and every case the Trustee in its own name and as trustee of an express trust, on behalf and for the benefit and protection of the Holders of all Outstanding Bonds, may proceed, and upon the written request of the Holders of not less than 25% in principal amount of the Bonds then Outstanding, shall proceed to declare the principal of all Bonds then Outstanding, together with all accrued and unpaid interest thereon, if not already due, to be due and payable immediately, and upon any such declaration the same shall become and be due and payable immediately, subject to the limitations contained in Section 6.3 hereof. This provision is also subject, however, to the condition that, if at any time after the principal of the Bonds, together with the accrued and unpaid interest thereon and other moneys secured hereby, have been so declared due and payable and before any further action has been taken (other than the making of the above declaration), the principal amount of all Bonds which have matured either according to the maturity date or dates otherwise specified therein (except as a result of such declaration) and all arrears of interest upon all Bonds, except interest accrued but not yet due on said Bonds, have been paid or caused to be paid, and all other Events of Default, if any, which have occurred have been remedied, cured or secured, then and in each and every such case the Holders of 25% in principal amount of the Bonds then Outstanding, by notice in writing delivered to the Trustee and the County, may waive such Default and its consequences and rescind and annul such declaration. No such waiver or rescission or annulment shall extend to or affect any subsequent default or impair or exhaust any right or power related to such subsequent Default.

Section 11.2. Suits at Law or in Equity and Mandamus. In case any one or more of the Events of Default shall happen and be continuing, then and in every such case, but subject to the provisions, limitations and conditions of Section 11.1 hereof so far as the remedies provided in said provisions are concerned, the Holder of any Bond at the time Outstanding, or Trustee therefor, may, for the equal benefit and protection of all Holders of the Bonds similarly situated,

- (a) by mandamus or other suit, action or proceedings at law or in the equity, enforce such Bondholder's right against the County and require and compel the County to perform and carry out its duties and obligations under the Act and this Ordinance, and to perform and carry out its covenants and agreements with the Bondholders;
- (b) by action or suit in equity require the County to account as if such County were the trustee of an express trust;
- (c) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Bondholders; or
- (d) bring suit upon the Bonds.

Section 11.3. Remedies Not Exclusive; Effect of Waiver of Default; Effect of Abandonment of Proceedings or Adverse Determination. The Holders from time to time of the Bonds shall be entitled to all the remedies and benefits of this Ordinance as are and as shall be provided by law, and, subject to the provisions of Section 11.1 hereof, nothing herein shall be construed to limit the rights or remedies of any such Holders under any applicable statute that may now exist or be enacted thereafter. No remedy conferred by the Act and this Article upon any Holder of any Bond is intended to be exclusive of any other remedy. Each and every such remedy shall be cumulative and shall be in addition to every other remedy and may be exercised without exhausting and without regard to any other remedy conferred by the Act and this Article or by any other law now or hereafter existing. Every substantive right and remedy conferred upon the Holders of the Bonds may be enforced and exercised from time to time and as often as may be deemed expedient.

No waiver of any default or breach of duty or contract by any Holder of any Bond shall extend to or affect any subsequent default or breach of duty or contract, or shall impair any rights or remedies thereon. No delay or omission of any Holder of a Bond to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein.

In case any suit, action or proceeding to enforce any right or exercise any remedy shall be brought or taken and then discontinued or abandoned, or shall be determined adversely to Holders of the Bonds then and in every such case, the County and such Holders shall be restored to their former positions and rights and remedies as if no suit, action or proceeding had been brought or taken.

Section 11.4. Restrictions on Bondholder's Action.

A. No Holder of any Bond shall have any right to institute any suit, action or proceeding at law or in equity for the enforcement of any provision of this Ordinance or the execution of any trust under this Ordinance or for any remedy under this Ordinance unless such Holder shall have previously given to the Trustee written notice of the happening of an Event of Default and the Holders of at least 25% in principal amount of the Bonds then Outstanding shall have filed a written request with the Trustee and shall have offered the Trustee reasonable opportunity, either to exercise the powers granted in this Ordinance or by the laws of the State or to institute such action, suit or proceeding in its own name, and unless such Holders shall have offered to the Trustee adequate security and indemnity against the costs, fees (including reasonable attorneys' fees), expenses and liabilities to be incurred therein or thereby, and the Trustee shall have refused to comply with such request for a period of sixty (60) days after receipt by it of such notice, request an offer of indemnity. No one or more Holders of Bonds shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the pledge created by this Ordinance, or to enforce any right under this Ordinance, except in the manner therein provided. All proceedings at law or in equity to enforce any provision of this Ordinance shall be instituted, had and maintained in the manner provided in this Ordinance and for the equal benefit of all Holders of the Outstanding Bonds.

B. Nothing in this Ordinance or in the Bonds contained shall affect or impair the obligation of the County, which is absolute and unconditional, to pay at the respective dates of maturity and places therein expressed the principal of (and redemption premium, if any) and interest on the Bonds to the respective Holders thereof, subject to the limitations contained in Section 6.3 hereof, or affect or impair the right of action, which is also absolute and unconditional, of any Holder to enforce such payment of his Bond.

Section 11.5. Application of Revenues and Other Moneys After Default. During the continuance of an Event of Default, all moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall, after payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the fees, expenses and advances incurred or made by the Trustee with respect thereto, be deposited in the respective Debt Service Funds, and all amounts held by the Trustee hereunder shall be applied as follows (provided if more than one Debt Service Fund has been established, such amounts shall be paid ratably):

A. Unless the principal of all Outstanding Bonds shall have become or have been declared due and payable:

First: To the payment to the persons entitled thereto of all installments of interest then due on the Bonds in the order of maturity of such installments, and, if the amount available shall not be sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably, according to the amounts due thereon to the person entitled thereto, without any discrimination or preference; and

Second: To the payment to the persons entitled thereto of the unpaid principal amounts or redemption premium, if any, of any Bonds which shall have become due (other than Bonds previously called for redemption in accordance with the provisions hereof), whether at maturity or by call for redemption, in the order of their due dates, and if the amounts available shall not be sufficient to pay in full all the Bonds due on any date, then to the payment thereof ratably, according to the principal amounts or redemption premium, if any, due on such date, to the persons entitled thereto, without any discrimination or preference.

B. If the principal amounts of all Outstanding Bonds shall have become or have been declared due and payable, to the payment of the principal amounts and interest then due and unpaid upon the Bonds without preference or priority of principal over interest or of interest over principal, of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal amounts and interest, to the persons entitled thereto without any discrimination or preference.

C. If the principal amounts of all Outstanding Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the provisions of this Article XI, then, subject to the provisions of this Section 11.6 in the event that the principal amounts of all Outstanding Bonds shall later become due or be declared due and payable, the moneys shall be applied in accordance with the provisions of paragraph (A) of this Section 11.6.

D. Whenever moneys are to be applied by the Trustee pursuant to the provisions of this Section, such moneys shall be applied by it at such times, and from time to time, as the Trustee shall determine, having due regard for the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such moneys, it shall fix the date (which shall be a Bond payment date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the principal amounts to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date, and shall not be required to make payment to the Holder of any Bond until such Bond shall be presented to the Trustee for appropriate endorsement of any partial payment or for cancellation if fully paid.

E. Whenever all Bonds and interest thereon have been paid under the provisions of this Section and all expenses and charges of the Trustee have been paid, any balance remaining shall be paid to the person entitled to receive the same; if no other person shall be entitled thereto, then the balance shall be paid to the County or as a court of competent jurisdiction may direct.

[Remainder of page intentionally left blank]

ARTICLE XII

DEFEASANCE

Section 12.1. Defeasance. The obligations of the County under this Ordinance and the liens, pledges, charges, trusts, covenants and agreements of the County herein made or provided for, shall be fully discharged and satisfied as to any Bond; and, unless or except as otherwise provided in the Supplemental Ordinance providing for the issuance of any Series of Bonds, such Bond or Series of Bonds shall no longer be deemed to be Outstanding hereunder, when:

A. Such Bond or Series of Bonds shall have been purchased by the County and surrendered to the County for cancellation or otherwise surrendered to the County or the Paying Agent, and is canceled or subject to cancellation by the County or Paying Agent; or

B. Payment of the principal of, redemption premium, if any, and interest on such Bond or Series of Bonds, either (a) shall have been made or caused to be made in accordance with the terms thereof, or (b) shall have been provided for by irrevocably depositing with the Trustee in trust and irrevocably setting aside exclusively for such payment, (i) moneys sufficient to make such payment, or (ii) Government Obligations maturing as to principal and interest in such amounts and at such times as will ensure the availability of sufficient moneys to make such payment, and all necessary and proper fees, compensation and expenses of the Trustee, Paying Agent and the Registrar, or a combination thereof. At such time as a Bond or Series of Bonds shall no longer be deemed to be Outstanding hereunder, as aforesaid, such Bond or Series of Bonds shall cease to draw interest from the maturity date or redemption date thereof, and, except for the purposes of any such payment from such moneys or Government Obligations, shall no longer be secured by or entitled to the benefits of this Ordinance.

Any moneys so deposited with the Trustee as provided in this Article may at the direction of the County also be invested and reinvested in Government Obligations, maturing in the amounts and times as hereinbefore set forth, and all income from all Government Obligations in the hands of such Trustee which is not required for the payment of the Bonds or Series of Bonds and interest thereon with respect to which such moneys shall have been so deposited, shall be treated as Pledged Revenues.

Notwithstanding any provision hereof which may be contrary to the provisions of this Article, all moneys or Government Obligations set aside and held in trust pursuant to the provisions of this Article for the payment of Bonds or Series of Bonds shall be applied to and used solely for the payment of the particular Bonds or Series of Bonds with respect to which such moneys and Government Obligations have been so set aside in trust.

Any provision hereof to the contrary notwithstanding, if moneys or Government Obligations have been deposited or set aside with the Trustee pursuant to this Article for the payment of the Bonds and such Bonds shall not have in fact been actually paid in full, no amendment to the provisions of this Article shall be made without the consent of the Bondholder of each Bond or Series of Bonds affected thereby.

If moneys or Government Obligations have been deposited with the Trustee pursuant to this Section 12.1 for payment of less than all Bonds of a Series and maturity, the Bonds of such

Series and maturity to be so paid from such deposit shall be selected by the Trustee by lot by such method as shall provide for the selection of portions (in authorized denominations) of the principal of Bonds of such Series and maturity of a denomination larger than the smallest authorized denomination. Such selection shall be made within seven (7) days after the moneys or Government Obligations have been deposited with the Trustee. This selection process shall be in lieu of the selection process otherwise provided with respect to redemption of Bonds in Article V. After such selection is made, Bonds that are to be paid from such deposit (including Bonds issued in exchange for such Bonds pursuant to the transfer or exchange provisions of this Ordinance) shall be identified by a separate CUSIP number or other designation satisfactory to the Trustee. The Trustee shall notify Bondholders whose Bonds (or portions thereof) have been selected for payment from the moneys or Government Obligations on deposit and shall direct such Bondholders to surrender their Bonds to the Trustee in exchange for Bonds with the appropriate designation. The selection of Bonds for payment from such deposit pursuant to this paragraph shall be conclusive and binding upon the County and the Bondholders.

The County shall give to the Trustee in form satisfactory to it irrevocable instructions to give notice of the deposit of moneys or Government Obligations, the selection of Bonds to be redeemed including CUSIP numbers and the anticipated date of redemption. The Trustee shall promptly give such notice to the Bondholders including the information required under Section 5.3.

[Remainder of page intentionally left blank]

ARTICLE XIII

MISCELLANEOUS

Section 13.1. Benefits of Ordinance Limited to the County, the Trustee and Holders of the Bonds. With the exception of rights or benefits herein expressly conferred, nothing expressed or mentioned in or to be implied from this Ordinance or the Bonds is intended or should be construed to confer upon or give to any person other than the County, the Trustee and the Holders of the Bonds, any legal or equitable right, remedy or claim under or by reason of or in respect to this Ordinance or any covenant, condition, stipulation, promise, agreement or provision herein contained. This Ordinance and all of the covenants, conditions, stipulations, promises, agreements and provisions hereof are intended to be and shall be for and inure to the sole and exclusive benefit of the County, the Trustee and the Holders from time to time of the Bonds as herein and therein provided.

Section 13.2. Ordinance Binding Upon Successors or Assigns of the County. All the terms, provisions, conditions, covenants, warranties and agreements contained in this Ordinance shall be binding upon the successors and assigns of the County and shall inure to the benefit of the Trustee, its successors or substitutes in trust and assigns, and the Holders of the Bonds.

Section 13.3. No Personal Liability. No recourse shall be had for the enforcement of any obligation, covenant, promise or agreement of the County contained in this Ordinance or the Bonds, against any member of the County, any officer or employee, as such, in his or her individual capacity, past, present or future, of the County, either directly or through the County, whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise. It is expressly agreed and understood that this Ordinance and the Bonds are solely corporate obligations, and that no personal liability whatsoever shall attach to, or be incurred by, any member, officer or employee as such past, present or future, of the County, either directly or by reason of any of the obligations, covenants, promises, or agreements entered into between the County and the Trustee or the Bondholder or to be implied therefrom as being supplemental hereto or thereto. All personal liability of that character against every such member, officer and employee is, by the adoption of this Ordinance and the execution of the Bonds, and as a condition of, and as a part of the consideration for, the adoption of this Ordinance and the execution of the Bonds, expressly waived and released. The immunity of members, officers and employees of the County under the provisions contained in this Section 13.3 shall survive the termination of this Ordinance.

Section 13.4. Effect of Saturdays, Sundays and Legal Holidays. Whenever this Ordinance requires any action to be taken on a Saturday, Sunday, legal holiday or bank holiday in the State, such action shall be taken on the first Business Day occurring thereafter. Whenever in this Ordinance the time within which any action is required to be taken or within which any right will lapse or expire shall terminate on a Saturday, Sunday, legal holiday or bank holiday, in the State, such time shall continue to run until midnight on the succeeding Business Day. Interest on such principal amount shall cease to accrue on the date on which such payment was due if such payment is made on the immediately succeeding Business Day.

Section 13.5. Partial Invalidity. If any one or more of the covenants or agreements or portions thereof provided in this Ordinance on the part of the County or the Trustee or any

Paying Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, then such covenant or covenants, or such agreement or agreements, or such portions thereof, shall be deemed severable from the remaining covenants and agreements and portions thereof provided in this Ordinance and the invalidity thereof shall in no way affect the validity of the other provisions of this Ordinance or of the Bonds, but the Holders of the Bonds shall retain all the rights and benefits accorded to them hereunder and under any applicable provisions of law.

If any provisions of this Ordinance shall be held or deemed to be or shall, in fact, be inoperative or unenforceable or invalid as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because of conflicts with any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable or invalid in any other case or circumstance, or of rendering any other provision or provisions herein contained inoperative or unenforceable or invalid to any extent whatever.

Section 13.6. Law and Place of Enforcement of this Ordinance. This Ordinance shall be construed and interpreted in accordance with the laws of the State and all suits and actions arising out of this Ordinance shall be instituted in a court of competent jurisdiction in the State.

Section 13.7. Effect of Article and Section Headings and Table of Contents. The headings or titles of the several Articles and Sections hereof, and any table of contents appended hereto or to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction, interpretation or effect of this Ordinance.

Section 13.8. Amendment to Multi-County Park Ordinances; Distribution of Highpointe/PointeWest Park Fee Payments; Repeal of Inconsistent Ordinances and Resolutions. The Multi-County Park Ordinances, other than Ordinance No. 2010-07 of the County which authorizes the establishment of the Highpointe/PointeWest Park, are hereby amended to provide that fifteen percent (15%) of the Fee Payments paid by or on behalf of the owners or lessees of property located within both the geographical boundaries of the County and in the respective Joint County Industrial and Business Parks authorized to be established by such Multi-County Park Ordinances, calculated prior to the payment of any Other Obligations and Special Source Credits and after payment of the Multi-County Fee to one or more Partner Counties under the terms of the respective Park Agreements, shall be retained by the County, deposited into the Revenue Fund established herein and be made available for use by the County in accordance with Article VI hereof, including payment of Debt Service on Bonds or Junior Bonds. The County hereby directs that one hundred percent (100%) of the Fee Payments paid by or on behalf of the owners or lessees of property located within both the geographical boundaries of the County and in the Highpointe/PointeWest Park, calculated after payment of the Multi-County Fee to the Partner County due thereunder, shall be retained by the County, deposited into the Revenue Fund established herein and be made available for use by the County in accordance with Article VI hereof, including payment of Debt Service on Bonds or Junior Bonds. All remaining provisions of the Multi-County Park Ordinances shall remain unchanged. All ordinances and resolutions of the County, and any part of any ordinance or resolution, inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

Section 13.9. Effectiveness of this Ordinance. This Ordinance shall become effective upon its enactment; provided, however, that it shall not be necessary for the County to establish the funds and accounts created in Article VI hereof prior to the issuance of any Bonds.

Section 13.10. Notices. All notices, certificates, or other communications hereunder or under this Ordinance shall be sufficiently given and shall be deemed given when mailed by registered mail, postage prepaid, or given when dispatched by telegram addressed as follows:

If to the County:

Oconee County, South Carolina
415 S. Pine Street
Walhalla, South Carolina 29691
Attention: County Administrator

If to the Trustee:

U.S. Bank National Association
1426 Main Street, 17th Floor (SC8358)
Columbia, SC 29201

The County and the Trustee may, by notice given to the other parties, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 13.11. Codification. This Ordinance shall be forthwith codified in the Code of County Ordinances in the manner required by law and the name shall be indexed under the general heading "General Bond Ordinance – Oconee County, South Carolina, Special Source Revenue Bonds".

[Signature page follows]

Enacted by the County Council of Oconee County, South Carolina, this ____ day of _____, 2010.

OCONEE COUNTY, SOUTH CAROLINA

(SEAL)

Chairman, County Council
Oconee County, South Carolina

ATTEST:

Administrator, Oconee County, South Carolina

Clerk to County Council,
Oconee County, South Carolina

Date of First Reading: February 16, 2010
Date of Second Reading: April 13, 2010
Date of Public Hearing: April 20, 2010
Date of Third Reading: May 4, 2010

[Signature Page]

**STATE OF SOUTH CAROLINA
OCONEE COUNTY
ORDINANCE NO. 2010-06**

FIRST SUPPLEMENTAL ORDINANCE

A FIRST SUPPLEMENTAL ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF A \$3,500,000 SPECIAL SOURCE REVENUE BOND, SERIES 2010, OF OCONEE COUNTY, SOUTH CAROLINA; PRESCRIBING THE FORM AND DETAILS OF SUCH BOND; PROVIDING FOR THE PAYMENT OF THE BOND AND THE DISPOSITION OF THE PROCEEDS THEREOF; AND OTHER MATTERS RELATING THERETO.

Enacted: _____, 2010

BE IT ORDAINED, BY THE COUNTY COUNCIL OF OCONEE COUNTY, SOUTH CAROLINA, IN COUNCIL ASSEMBLED:

Section 1. Definitions. The terms in this Section 1 and all words and terms defined in General Bond Ordinance No. 2010-05 enacted by Council on _____, 2010 (the "General Bond Ordinance"), shall for all purposes of this First Supplemental Ordinance No. 2010-06 have the respective meanings given to them in the General Bond Ordinance and in Section 1 hereof. The following terms as used in this First Supplemental Ordinance shall, unless the context requires otherwise, have the following meanings:

"2010 Projects" shall mean the Costs of Acquisition and Construction of one or more of the projects identified in Exhibit A attached hereto and incorporated herein by reference.

"Bond of 2010" shall mean the Oconee County, South Carolina, Special Source Revenue Bond in the aggregate principal amount of \$3,500,000 authorized to be issued hereunder.

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Construction Fund of 2010" shall mean the fund of that name established pursuant to Section 7 herein.

"Custodian" shall mean the either the County Treasurer or the bank selected by the County as custodian of the Construction Funds of 2010.

"Debt Service Fund of 2010" shall mean the fund of that name established pursuant to Section 5 herein.

"First Supplemental Ordinance" shall mean this First Supplemental Ordinance No. 2010-06.

"Interest Payment Date" shall mean April 1 of each year, commencing April 1, 2011.

"Paying Agent" shall mean U.S. Bank National Association, as Paying Agent for the Bond of 2010.

"Principal Payment Date" shall mean April 1 of each year, commencing April 1, 2012 and ending April 1, 2025.

"Purchaser" shall mean Branch Banking and Trust Company.

"Registrar" shall mean U.S. Bank National Association, as Registrar for the Bond of 2010.

Section 2. Certain Findings and Determinations. The Council hereby finds and determines:

(a) This First Supplemental Ordinance supplements the General Bond Ordinance, constitutes and is a "Supplemental Ordinance" within the meaning of such quoted term as defined and used in the General Bond Ordinance, and is enacted under and pursuant to the General Bond Ordinance.

(b) The Bond of 2010 constitutes and is a "Bond" as defined and used in the General Bond Ordinance.

(c) The Pledged Revenues pledged under the General Bond Ordinance and this First Supplemental Ordinance are not encumbered by any pledge thereof, other than the pledge thereof created by the General Bond Ordinance and this First Supplemental Ordinance for payment and security of the Bond of 2010.

(d) There does not exist an Event of Default, nor does there exist any condition which, after the passage of time or the giving of notice, or both, would constitute such Event of Default.

(e) The Bond of 2010 is being issued for the purposes of paying a portion of the Costs of Acquisition and Construction of the 2010 Projects and Costs of Issuance of the Bond of 2010. The estimated Costs of Acquisition and Construction of the 2010 Projects and Costs of Issuance of the Bond of 2010 are not less than \$3,500,000 to be financed in part with the proceeds of the Bond of 2010.

(f) The Purchaser has offered to purchase the Bond of 2010 at a rate of interest of ___% per annum. A copy of the Purchaser's proposal is attached hereto as Exhibit B.

(g) The proceeds of the Bond of 2010 shall be used to: (1) defray the Costs of Acquisition and Construction of the 2010 Projects; and (2) pay Costs of Issuance of the Bond of 2010.

(h) It is necessary and in the best interest of the County to issue the Bond of 2010 in the aggregate principal amount of \$3,500,000 in accordance with the Act, the General Bond Ordinance and this First Supplemental Ordinance for the purposes set forth above.

Section 3. Authorization and Details of Bond of 2010; Delegation of Authority to Determine Certain Matters Relating to the Bond of 2010.

(a) There is hereby authorized to be issued a special source revenue bond designated "Oconee County, South Carolina, Special Source Revenue Bond, Series 2010", in the principal amount of \$3,500,000. The proceeds of the Bond of 2010 shall be used for the purposes set forth in Section 2(g) above.

(b) The offer of the Purchaser to purchase the Bond of 2010 at a price of par and an interest rate of ___ % per annum is hereby accepted. The County Administrator is hereby authorized and directed to accept the offer of the Purchaser and deliver such acceptance to the Purchaser. In the event of a conflict in the terms and provisions of such offer and this First Supplemental Ordinance, the terms and provisions of this First Supplemental Ordinance shall prevail.

(c) The Bond of 2010 shall be represented by a single, fully registered bond; shall be registered in the name of the Purchaser; shall be dated the date of delivery; and shall be in the principal amount of \$3,500,000. Interest on the unpaid principal amount of the Bond of 2010 shall be payable on April 1 of each year commencing April 1, 2011 until its maturity or prior redemption. The Bond of 2010 shall be payable annually in principal installments on April 1 of each year, commencing April 1, 2012, in the years and in the principal amounts as set forth in the table below. Interest on the Bond of 2010 shall be calculated on the basis of a 360-day year comprising twelve 30-day months.

The Bond of 2010 will be payable on April 1 in each of the years and in the principal amounts as follows:

Year	Principal Amount	Year	Principal Amount
2012	\$180,000	2019	\$250,000
2013	190,000	2020	265,000
2014	195,000	2021	280,000
2015	205,000	2022	290,000
2016	215,000	2023	305,000
2017	230,000	2024	320,000
2018	240,000	2025	335,000

The Chairman or Vice-Chairman of County Council and the County Administrator are authorized adjust the principal payment schedule set forth above, provided the Bond of 2010 shall not be issued in an aggregate principal amount which exceeds \$3,500,000, and its final maturity shall not extend beyond April 1, 2025.

The Bond of 2010, and the interest thereon, is a special obligation of the County payable solely from, and secured by a pledge of the Pledged Revenues. The Bond of 2010, and the interest thereon are, (a) payable solely from all or a specifically described portion of the Pledged Revenues retained by the County; (b) not secured by, or in any way entitled to, a pledge of the full faith, credit, or taxing power of the County; (c) not an indebtedness of the County within the meaning of any state constitutional provision or statutory limitation but is payable solely from a special source that does not include revenues from any tax or license; and (d) not a pecuniary liability of the County or a charge against the County's general credit or taxing power.

(d) The Chairman or Vice-Chairman of the Council and the County Administrator are empowered to include any additional provisions in the Bond of 2010 as requested by the Purchaser in accordance with its proposal to purchase the Bond of 2010.

(e) The Council hereby authorizes and directs the Chairman or Vice-Chairman of the Council to execute the Bond of 2010 in the name of the County, and authorizes and directs the Clerk to the Council to attest the manual signature of the Chairman or Vice-Chairman of the Council under the seal of the County impressed, imprinted or reproduced thereon.

(f) The Bond of 2010 shall originally be dated its date of initial issuance and shall be issued as a fully registered Bond in substantially the form set forth as Exhibit C hereto.

Section 4. Optional Redemption of Bond of 2010. Unless otherwise agreed to by the Chairman of County Council, the principal amounts of the Bond of 2010 maturing on or before April 1, 2018, are not subject to redemption prior to their maturity. The principal amounts of the Bond of 2010 maturing on or after April 1, 2019, shall be subject to prepayment or redemption at the option of the County on and after April 1, 2018, as a whole at any time or in part from time to time in inverse order of maturities at the principal amount thereof and interest accrued on such principal amount to be redeemed to the date fixed for redemption, without payment of any premium or penalty. In the event the Bond of 2010 is called for redemption, the County shall give notice of redemption of the Bond of 2010 by first-class mail, postage prepaid, to the registered owner thereof as shown on the Books of Registry of the County not less than ten (10) days prior to the date fixed for the redemption thereof.

Section 5. Establishment of Debt Service Fund of 2010. In accordance with Section 6.6 of the General Bond Ordinance, the Debt Service Fund of 2010 is hereby directed to be established with the Trustee for the Bond of 2010 on the date of original delivery of the Bond of 2010 for the benefit of the Purchaser of the Bond of 2010. In addition, there is hereby directed to be established within the Debt Service Fund of 2010 an Interest Account and a Principal Account for the payment of interest and principal, respectively, on the Bond of 2010 as the same become due and payable. The payments from the Pledged Revenues authorized herein shall be made at the times set forth in Section 6.6 of the General Bond Ordinance.

Section 6. Payment of the Bond of 2010. The Bond of 2010 is secured by a pledge of the Pledged Revenues referred to and subject to the limitations set forth in Section 6.3 of the General Bond Ordinance, and shall be subject to no prior liens or encumbrances other than as provided under the General Bond Ordinance and this First Supplemental Ordinance.

Section 7. Construction Fund of 2010. There is hereby created and established the Construction Fund of 2010 which fund shall be held by the Custodian. Payments from the Construction Fund of 2010 shall be made by the Custodian only upon receipt of requisition in substantially the form attached hereto as Exhibit D, signed by an Authorized County Representative, stating, with respect to each payment for 2010 Projects:

- (a) The amount to be paid;
- (b) The nature and purpose of the obligation for which such payment is requested;
- (c) The person, firm or corporation to whom such obligation is owed or to whom a reimbursable advance has been made;
- (d) That such obligation is a proper payment under the Bond of 2010 and has not been the basis of any previous advance;
- (e) That the County has not received notice of any mechanic's, materialmen's or other liens or right to liens or other obligations (other than those being contested in good faith) which should be satisfied or discharged before payment of such obligation is made; and

Upon written direction to the Custodian by an Authorized County Representative, moneys in the Construction Fund of 2010 may also be expended for Costs of Issuance.

In making any such payment from the Construction Fund of 2010, the Custodian may rely on such directions, requisitions and certifications delivered to it pursuant to this Section 7 and the Custodian shall not have any liability with respect to making such payments in accordance with such directions, requisitions and certifications for any liability with respect to the proper application thereof by the County.

Section 8. Disposition of Proceeds of Bond of 2010. The proceeds derived from the sale of the Bond of 2010 shall be deposited with the Custodian for deposit in the Construction Fund of 2010 and used to pay the Costs of Acquisition and Construction of the 2010 Projects and to pay Costs of Issuance.

Section 9. Federal Tax Covenants. The County hereby covenants and agrees with the Purchaser that it will not take any action which will, or fail to take any action which failure will, cause interest such Bond to become includable in the gross income of the Purchaser for federal income tax purposes pursuant to the provisions of the Code and regulations promulgated thereunder in effect on the date of original issuance of such Bond. The County further covenants and agrees with the Purchaser that no use of the proceeds of the Bond of 2010 shall be made which, if such use had been reasonably expected on the date of issue of such Bond would have caused such Bond to be "arbitrage bonds," as defined in the Code; and to that end the County shall:

- (a) Comply with the applicable provisions of Section 103 and Sections 141 through 150 of the Code and any regulations promulgated thereunder so long as such Bond is Outstanding;

(b) Establish such funds, make such calculations and pay such amounts, if necessary, in the manner and at the times required in order to comply with the requirements of the Code relating to required rebates of certain amounts to the United States; and

(c) Make such reports of such information at the times and places required by the Code.

Section 10. Bank Qualified. The County covenants that, in accordance with the provisions of the Code, the Bond of 2010 is designated as a "qualified tax-exempt obligation" as defined in Section 265 of the Code. The County and all subordinate entities thereof do not anticipate issuing more than \$30,000,000 (exclusive of tax-exempt bonds or other obligations which are not included in the \$30,000,000 limitation under the applicable provisions of Section 265 of the Code) in tax-exempt bonds or other tax-exempt obligations in calendar year 2010 (other than private activity bonds which are "qualified 501(c)(3) bonds" as defined in the Code). The County represents that the sum of all tax-exempt obligations (other than tax-exempt bonds or other obligations not included in the \$30,000,000 limitation under the applicable provisions of Section 265 of the Code and private activity bonds) issued by the County and all subordinate entities thereof during calendar year 2010 is not reasonably expected to exceed \$30,000,000.

Section 11. Filings with Central Repository. In compliance with Section 11-1-85 of the South Carolina Code, the County covenants, so long as and to the extent required pursuant to Section 11-1-85, that it will file or cause to be filed with a central repository for availability in the secondary bond market when requested: (a) a copy of an annual independent audit of the County within thirty (30) days of the County's receipt thereof; and (b) event-specific information within thirty (30) days of the County's receipt of the audit affecting more than five percent (5%) of the Pledged Revenues, or the County's tax base.

The only remedy for failure by the County to comply with the covenant of this paragraph shall be an action for specific performance of this covenant; and failure to comply shall not constitute a default or an "Event of Default" under the Ordinance or this First Supplemental Ordinance. The County specifically reserves the right to amend or delete this covenant to reflect any change in Section 11-1-85 without the consent of any Bondholder.

Section 12. Further Actions. The Chairman of the Council, Vice-Chairman of the Council, County Administrator, Assistant County Administrator for Administrative and Finance, Clerk to Council, County Attorney, and all other officers and employees of the County are hereby authorized and directed to take any and all such further actions as shall be deemed necessary or desirable in order to effectuate issuance of the Bond of 2010 and to carry out the intentions of this First Supplemental Ordinance.

Section 13. Designation of Custodian. The Chairman or Vice-Chairman of Council and the County Administrator are hereby authorized to designate the Custodian of the Construction Fund of 2010. The Custodian shall signify its acceptance of its duties upon delivery of the Bond of 2010.

Section 14. Section Headings. The headings and titles of the several sections hereof shall be solely for convenience of reference and shall not affect the meaning, construction, interpretation or effect of this First Supplemental Ordinance.

Section 15. Repeal of Inconsistent Ordinances and Resolutions. All ordinances and resolutions of the County, and any part of any ordinance or resolution, inconsistent with this First Supplemental Ordinance are hereby repealed to the extent of such inconsistency.

Section 16. Effective Date. This First Supplemental Ordinance shall become effective upon its enactment.

[Execution follows on next page]

Enacted by the County Council of Oconee County, South Carolina, this _____ day of _____, 2010,

OCONEE COUNTY, SOUTH CAROLINA

(SEAL)

Chairman, County Council
Oconee County, South Carolina

ATTEST:

Administrator, Oconee County, South Carolina

Clerk to County Council,
Oconee County, South Carolina

Date of First Reading: February 16, 2010
Date of Second Reading: April 6, 2010
Date of Public Hearing: _____, 2010
Date of Third Reading: _____, 2010

[Execution Page]

EXHIBIT A

2010 PROJECTS

The following projects or activities undertaken in the Highpointe/PointeWest Park:

Land acquisition

Construction - Site Preparation
Environmental Engineering/VCC Remaining
Environmental Remediation
Strip and Spread Topsoil
Excavate, Place and Compact Material
Fine Grade Mass Graded Area
Grassing Mass Graded Area

Infrastructure

Remaining Demolition
Staking for Grading and Storm Drainage
Clearing and Grubbing
Rough Grading
Fine Grading for Roads and Curbs
Temporary Sediment Traps
Storm Drainage Design and Construction
Sediment Ponds
Erosion Control Allowance
Paving Design and Construction
Roll Curbs Including Staking
4' Sidewalks (one side)

Professional Services

Architects/Design Consultants

EXHIBIT B

PROPOSAL OF PURCHASER

EXHIBIT C

(FORM OF BOND)

UNITED STATES OF AMERICA
STATE OF SOUTH CAROLINA
OCONEE COUNTY
SPECIAL SOURCE REVENUE BOND
SERIES 2010

Amount
\$ _____ .00

Oconee County, South Carolina (the "County"), is justly indebted and, for value received, hereby promises to pay to Branch Banking and Trust Company (the "Holder") or its registered assigns, but solely from the special source hereinafter mentioned, and not otherwise, a principal amount of \$ _____, together with interest on the principal amount hereof from time to time unpaid at the rate of ___% per annum (calculated on the basis of a 360-day year of twelve 30-day months), but solely from such special source and not otherwise, until this Bond matures. Interest on this Bond is payable on April 1 of each year commencing April 1, 2011 until its maturity or prior redemption, and shall be payable to the Holder by check or draft mailed to the person in whose name this Bond is registered on the registration books of the County maintained by U.S. Bank National Association, as registrar (the "Registrar") in Columbia, South Carolina.

This Bond, and the interest hereon is, (a) payable solely from all or a specifically described portion of the Pledged Revenues (as defined in the General Bond Ordinance described below) retained by the County; (b) not secured by, or in any way entitled to, a pledge of the full faith, credit, or taxing power of the County; (c) not an indebtedness of the County within the meaning of any state constitutional provision or statutory limitation but is payable solely from a special source that does not include revenues from any tax or license; and (d) not a pecuniary liability of the County or a charge against the County's general credit or taxing power.

This Bond is payable as to principal on April 1 in each of the years and in the principal amounts as follows:

<u>Year</u>	<u>Principal Amount</u>	<u>Year</u>	<u>Principal Amount</u>
2012	\$180,000	2019	\$250,000
2013	190,000	2020	265,000
2014	195,000	2021	280,000
2015	205,000	2022	290,000
2016	215,000	2023	305,000
2017	230,000	2024	320,000
2018	240,000	2025	335,000

The principal amounts of this Bond maturing on or before April 1, 2018, are not subject to redemption prior to their maturity. The principal amounts of this Bond maturing on or after April 1,

2019, shall be subject to prepayment or redemption at the option of the County on and after April 1, 2018, as a whole at any time or in part from time to time in inverse order of maturities at the principal amount thereof and interest accrued on such principal amount to be redeemed to the date fixed for redemption, without payment of any premium or penalty. In the event this Bond is called for redemption, the County shall give notice of redemption by first-class mail, postage prepaid, to the registered owner thereof as shown on the books of registry of the County not less than ten (10) days prior to the date fixed for the redemption thereof.

Both the principal of and interest on this Bond are payable at the principal office of the Holder in any coin or currency of the United States of America which is, at the time of payment, legal tender for public and private debts.

This Bond is issued by the County for the purposes of defraying the Costs of Acquisition and Construction of the 2010 Projects and Costs of Issuance (as such terms are defined in the Ordinances hereafter mentioned). This Bond is authorized to be issued and is issued under, pursuant to and in full compliance with the Constitution and statutes of the State of South Carolina, including particularly Section 4-1-175 and Section 4-29-68 of the Code of Laws of South Carolina 1976, as amended (the "Act"). This Bond is also authorized to be issued and is issued under and pursuant to General Bond Ordinance No. 2010-05 of the County Council of Oconee County duly enacted on _____, 2010 (the "General Bond Ordinance"), and First Supplemental Ordinance No. 2010-06 of the County Council of Oconee County duly enacted on _____, 2010 (the "First Supplemental Ordinance" and, together with the General Bond Ordinance, the "Ordinances"), under the Act, which Ordinances have been duly codified and indexed as prescribed by law.

This Bond, including interest thereon, is payable solely from a portion of the Pledged Revenues and is secured equally and ratably by a pledge of the Pledged Revenues and certain funds and accounts established under the Ordinances with respect thereto heretofore mentioned which are pledged to the payment thereof, and the County is under no obligation to pay the same except from such sources. Bonds on a parity with this Bond may hereafter be issued under terms and conditions set forth in the General Bond Ordinance. Such Bonds shall be equally and ratably secured with the pledge of the Pledged Revenues.

The Ordinances contain provisions defining terms; set forth the sources of payment for the principal of and interest on this Bond; set forth the Pledged Revenues pledged for the payment of the principal of and interest on this Bond and the Bonds of other series herewith which may hereafter be issued on a parity herewith under the General Bond Ordinance; set forth the nature, extent and manner of enforcement of the security of this Bond and of such pledge, and the rights and remedies of the holder hereof with respect thereto; set forth the terms and conditions upon which this Bond is issued and upon which other bonds may be hereinafter issued payable as to principal, premium, if any, and interest on a parity with this Bond and equally and ratably secured herewith; sets forth the rights, duties and obligations of the County thereunder; and set forth the terms and conditions upon which the pledge made in the General Bond Ordinance for the security of this Bond and upon which the covenants, agreements and other obligations of the County made therein may be discharged at or prior to the maturity or redemption of this Bond with provisions for the payment thereof in the manner set forth in the General Bond Ordinance. Reference is hereby made to the Ordinances to all of the provisions of which any holder of this Bond by the acceptance hereof thereby assents.

IN WITNESS WHEREOF, Oconee County, South Carolina, has caused this Bond to be executed in its name by the manual signature of the Chairman/Vice-Chairman of the County Council and attested by the Clerk to the County Council under the seal of the County, this Bond to be dated the _____ day of _____, 2010.

OCONEE COUNTY, SOUTH CAROLINA

By: _____
Chairman/Vice-Chairman, County Council
Oconee County, South Carolina

(SEAL)

ATTEST:

Clerk to County Council
Oconee County, South Carolina

REGISTRATION

This Bond is one of the Bonds described in the within-mentioned Ordinances of Oconee County, South Carolina.

U.S. BANK NATIONAL ASSOCIATION,
as Registrar

Dated: _____

By: _____
Authorized Officer

EXHIBIT D

FORM OF REQUISITION

NO. _____

TO:

THIS IS TO CERTIFY:

With regard to the First Supplemental Ordinance No. 2010-06 enacted on _____, 2010, authorizing the issuance of the County's \$3,500,000 Special Source Revenue Bond, Series 2010, the following information is submitted with respect to the costs of the 2010 Projects (as defined in the First Supplemental Ordinance) or costs of issuance:

- A. Payment should be made by a deposit to C/A# _____ or a check issued to the person, firm or corporation on the attached schedule.
1. The amount to be paid: \$ _____.
 2. The nature and purpose of the obligation for which payment is requested is set forth on the attached schedule, and a bill or statement of account for such obligation is also attached hereto.
 3. The person, firm or corporation to whom such obligation is owed or to whom a reimbursable advance has been made is also set forth on the attached schedule.
 4. This obligation has been properly incurred and is a proper charge against the Construction Fund of 2010 and has not been the basis of any previous withdrawal.
 5. The County has not received notice of any mechanic's, materialmen's or other liens or right to liens or other obligations (other than those being contested in good faith) which should be satisfied or discharged before payment of such obligation is made.

OCONEE COUNTY, SOUTH CAROLINA

By: _____
Authorized County Representative

_____, 20____



STATE OF SOUTH CAROLINA
OCONEE COUNTY

ORDINANCE NO. 2010-07

AN ORDINANCE TO DEVELOP A JOINT COUNTY BUSINESS PARK IN CONJUNCTION WITH PICKENS COUNTY, SOUTH CAROLINA ("PICKENS COUNTY"), SUCH BUSINESS PARK TO BE GEOGRAPHICALLY LOCATED IN OCONEE COUNTY, SOUTH CAROLINA ("OCONEE COUNTY") AND ESTABLISHED PURSUANT TO ARTICLE VIII, SECTION 13 OF THE SOUTH CAROLINA CONSTITUTION, AND SOUTH CAROLINA CODE OF LAWS OF 1976 §4-1-170, ET SEQUITUR, AS AMENDED; TO PROVIDE FOR A WRITTEN AGREEMENT WITH PICKENS COUNTY PROVIDING FOR THE PAYMENT OF EXPENSES OF THE PARK, THE PERCENTAGE OF REVENUE APPLICATION, AND THE DISTRIBUTION OF FEES-IN-LIEU OF *AD VALOREM* TAXES TO OCONEE COUNTY, PICKENS COUNTY AND RELEVANT TAXING ENTITIES; TO PROVIDE THAT JOBS TAX CREDITS ALLOWED BY LAW BE PROVIDED FOR BUSINESSES LOCATING IN SAID PARK; TO PERMIT A USER FEE-IN-LIEU OF *AD VALOREM* TAXATION WITHIN SAID PARK; AND OTHER MATTERS RELATED THERETO.

WHEREAS, Oconee County, South Carolina ("Oconee County") and Pickens County, South Carolina ("Pickens County," and Oconee County and Pickens County jointly, the "Counties") are authorized under Article VIII, Section 13 of the South Carolina Constitution to jointly develop business parks within the geographical boundaries of one or more of the member counties; and

WHEREAS, in order to promote the economic welfare of the citizens of the Counties by providing employment and other benefits to the citizens of the Counties and promoting economic development in, and enhancing the tax base of the Counties, Oconee County proposes to enter into an agreement with Pickens County to develop jointly a business park wholly within Oconee County, as provided by Article VIII, Section 13 of the South Carolina Constitution and in accordance with Section 4-1-170 of the Code of Laws of South Carolina, 1976, as amended, (the "Act").

NOW, THEREFORE, BE IT ORDAINED BY THE OCONEE COUNTY COUNCIL:

Section 1: Oconee County is hereby authorized to execute and deliver a written agreement to jointly develop a business park (the "Park") with Pickens County. The Park is to be located within the boundaries of Oconee County. The form of the Agreement for Development of Joint County Business Park (the "Agreement") presented to the County Council of Oconee County ("Oconee County Council") and filed with the minutes of the meeting of the Oconee County Council and all terms of the Agreement are hereby incorporated herein. The form, terms and provisions of the Agreement presented to this meeting and filed with the Clerk to Oconee County Council be and they are hereby approved and all of the terms, provisions and conditions thereof are hereby incorporated herein by reference as if the Agreement were set out in this Ordinance in its

entirety. The Chairman of the Oconee County Council, and the Administrator of Oconee County be and they are hereby authorized, empowered and directed to execute, acknowledge and deliver the Agreement in the name and on behalf of Oconee County. The Agreement is to be in substantially the form now before this meeting and hereby approved, or with such minor changes therein as shall be approved by the officials of Oconee County executing the same, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of Agreement now before this meeting.

Section 2. The maximum tax credits allowable by South Carolina Code of Laws of 1976, Section 12-6-3360, as amended, will apply to any business enterprise locating in the Park.

Section 3. A fee-in-lieu of *ad valorem* taxes as provided for in the Agreement, Article VIII Section 13 of the South Carolina Constitution, the Act and/or Titles 4 or 12 of the South Carolina Code of Laws 1976, as amended, shall be paid by or on behalf of the owners of any property located in the Park. The fee paid in-lieu of *ad valorem* taxes shall be paid to the Oconee County Treasurer. Within 15 business days following the end of the calendar quarter of its receipt of the fee paid in-lieu of *ad valorem* taxes, the Oconee County Treasurer shall pay a portion of the user fees to the Pickens County Treasurer pursuant to the terms of the Agreement. Payments of fees-in-lieu of *ad valorem* taxes shall be made on or before the due date for taxes for a particular year. Penalties for late payment will be at the same rate and at the same times as for late tax payment. Any late payment beyond said date will accrue interest at the rate of statutory judgment interest. The Counties, acting by and through the county tax collector for Oconee County, shall maintain all liens and rights to foreclose upon liens provided for counties in the collection of *ad valorem* taxes.

Section 4. The administration, development, promotion, and operation of the Park shall be the responsibility of Oconee County, provided, that to the extent any Park premises is owned by a private party, the private party shall be responsible for development expenses as contained in the Agreement.

Section 5. In order to avoid any conflict of laws or ordinances between the Counties, Oconee County ordinances will be the reference for such regulations or laws in connection with the Park. Nothing herein shall be taken to supersede any state or federal law or regulation.

Section 6. The public safety officials which serve the Park shall be those which would otherwise normally provide such services in the geographic area within which the Park is located.

Section 7. Should any section of this Ordinance be, for any reason, held void or invalid, it shall not affect the validity of any other section hereof which is not itself void or invalid.

Section 8. The Agreement may not be terminated except by concurrent ordinances of Oconee County Council and the County Council of Pickens County, in accordance with the terms of the Agreement.

Section 9. Oconee County hereby designates that the distribution of the fee-in-lieu of *ad valorem* taxes pursuant to the Agreement received and retained by Oconee County for Park premises, including payment of the partner county fee (1% to Pickens County), shall be as directed

by the Agreement, provided that Oconee County may, from time to time, by ordinance, amend the distribution of the fee-in-lieu of tax payments to all taxing entities. All or a portion of the fee-in-lieu of taxes which Oconee County receives and retains pursuant to the Agreement or pursuant to an ordinance that provides for the distribution thereof may be, from time to time and by ordinance of Oconee County Council or its successor, designated for the payment of special source revenue bonds under Section 4-29-68, Code of Laws of South Carolina 1976, as amended.

Section 10. This Ordinance shall be effective after third and final reading and approval by Oconee County Council

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

WITNESS our hands and seals this ___ day of _____, 2010.

OCONEE COUNTY, SOUTH CAROLINA

BY: _____
Chairman, County Council,
Oconee County, South Carolina

BY: _____
Administrator
Oconee County, South Carolina

ATTEST:

BY: _____
Clerk to County Council
Oconee County, South Carolina

First Reading: February 16, 2010
Second Reading: April 6, 2010
Public Hearing: _____, 2010
Third Reading: _____, 2010

3. **Location of the Park.**

(A) The Park consists of property located in Oconee County, as is hereinafter more specifically described in Exhibit A attached hereto. It is specifically recognized that the Park may from time to time consist of non-contiguous properties. The boundaries of the Park may be enlarged or diminished from time to time as authorized by ordinances of both of the Counties. Notwithstanding the foregoing, or anything contained in this Agreement or Exhibit A to the contrary, any portion of the real property taxed on an assessment equal to four percent (4%) of the fair market value of such property pursuant to Section 12-43-220(c), Code of Laws of South Carolina, 1976, as amended, shall not be included within or comprise any part of the Park during the fiscal years in which such property meets the qualifications of Section 12-43-220(c).

(B) In the event of any enlargement or diminution of the boundaries of the Park, this Agreement shall be deemed amended and there shall be attached hereto a revised Exhibit A which shall contain a legal description of the boundaries of the Park, as enlarged or diminished, together with a copy of the ordinances of the County Council of Oconee County ("Oconee County Council") and the County Council of Pickens County ("Pickens County Council") pursuant to which such enlargement or diminution was authorized.

(C) Prior to the adoption by Oconee County Council and by Pickens County Council of ordinances authorizing the diminution of the boundaries of the Park, a public hearing shall first be held by Oconee County Council. Notice of such public hearing shall be published in a newspaper of general circulation in Oconee County at least once and not less than fifteen (15) days prior to such hearing. Subsequent to the public hearing in Oconee County, a public hearing shall also be held in Pickens County, with Notice of such public hearing being published in a newspaper of general circulation in Pickens County at least once and not less than fifteen (15) days prior to such hearing.

(D) Notwithstanding anything in this Agreement to the contrary, to the extent there is at any time made a finally adjudicated finding or determination by a court of competent jurisdiction that inclusion of a type or class of property within the Park is violative of Section 4-1-170, the Constitution of the State of South Carolina or any other law of the State of South Carolina, then, without further action or amendment of this Agreement by the parties hereto, any property of such type or class previously included within the Park shall be deemed to have been immediately removed from the Park as of the date of such final adjudication, and all property of such type or class shall be excluded from the Park thereafter. To the extent that the foregoing provisions of this Subsection (D) do not cure said violation as found or determined by a court of competent jurisdiction with respect to a type or class of property included within or comprising a part of the Park, the parties hereto covenant and agree that this Agreement shall be deemed amended to the extent necessary to comply with the laws of the State of South Carolina and the Constitution of the State of South Carolina in accordance with such court's finally adjudicated finding or determination.

4. **Fee-in-Lieu of Taxes.** Property located in the Park shall be exempt from *ad valorem* taxation during the term of this Agreement. The owners or lessees of any property situated in the Park shall pay in accordance with and during the term of this Agreement an amount equivalent to the *ad valorem* property taxes or other in-lieu of payments that would have been due

and payable but for the location of such property within the Park. Where, in this Agreement, reference is made to payment of *ad valorem* property taxes or other in-lieu of payments, such reference shall be construed, in accordance with this Paragraph 4, to mean the *ad valorem* property taxes or other in-lieu of payments that would otherwise have been due to be paid to Oconee County, after deduction of all applicable allowances, credits, deductions, and exemptions authorized or required by state law.

5. **Allocation of Park Expenses.** The Counties shall bear expenses, including, but not limited to, development, operation, maintenance and promotion of the Park in the following proportions:

A.	Oconee County	100%
B.	Pickens County	0%

6. **Allocation of Park Revenues.** The Counties shall receive an allocation of all revenue generated by the Park through payment of fees-in-lieu of *ad valorem* property taxes or from any other source in the following proportions:

A.	Oconee County	99%
B.	Pickens County	1%

Any payment by Oconee County to Pickens County of its allocable share of the fees-in-lieu of taxes from the Park shall be made not later than fifteen (15) days from the end of the calendar quarter in which Oconee County receives such payment from the occupants of the Park. In the event that the payment made by any occupant of a Park is made under protest or is otherwise in dispute, Oconee County shall not be obligated to pay to Pickens County more than Pickens County's share of the undisputed portion thereof until thirty (30) days after the final resolution of such protest or dispute.

7. **Revenue Allocation Within Each County.** Revenues generated by the Park through the payment of fees-in-lieu of *ad valorem* property taxes shall be distributed to the Counties according to the proportions established by Paragraph 6. Revenues allocated to Oconee County shall be distributed as provided in Oconee County General Bond Ordinance No. 2010-05. Revenues allocated to Pickens County shall be distributed within Pickens County in the manner directed by Pickens County ordinance(s) relating thereto. Notwithstanding any provision contained herein to the contrary, Oconee County Council and Pickens County Council may otherwise direct the allocation of the revenues from the Park by ordinance, including, but not limited to, allocation of all or a portion of such revenues for the payment of special source revenue bonds under Section 4-29-68, Code of Laws of South Carolina 1976, as amended.

8. **Fees-in-Lieu of Taxes Pursuant to Code of Laws of South Carolina.** It is hereby agreed that the entry by Oconee County into any one or more negotiated fee-in-lieu of tax agreements pursuant to Titles 4 or 12, South Carolina Code, 1976, as amended, or any successor or comparable statutes, with respect to property located within the Park and the terms of such agreements shall be at the sole discretion of Oconee County.

9. **Assessed Valuation.** For the purpose of calculating the bonded indebtedness limitation of the Oconee Participating Taxing Entities and for the purpose of computing the index of taxpaying ability of the School District of Oconee County, South Carolina pursuant to Section 59-20-20(3), Code of Laws of South Carolina, 1976, as amended, allocation of the assessed value of property within the Park to Oconee County shall be identical to the percentage established for the allocation of revenue to Oconee County pursuant to Paragraphs 6 and 7 respectively, subject, however, to the provisions of Section 4-29-68(E) of the Code of Laws of South Carolina, 1976, or any successor legislation.

10. **Job Tax Credit Valuation.** For purposes of the job tax credit authorized by subsections of Section 12-6-3360, South Carolina Code of Laws, 1976, as amended ("Section 12-6-3360"), Oconee County is the county in which the permanent business enterprise is deemed to be located.

11. **Records.** The Counties covenant and agree that, upon the request of either, the other will provide to the requesting party copies of the records of the annual tax levy and copies of the actual tax bills, for parcels of property encompassed by this Agreement, and will further provide copies of the respective Counties' County Treasurer's collection records for the taxes so imposed, all as such records become available in the normal course of the Counties' procedures. It is further agreed that none of the parties shall request such records from any other party more frequently than once annually, absent compelling justification to the contrary.

13. **Severability.** In the event and to the extent (and only to the extent) that any provision or any part of a provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable the remainder of that provision or any other provision or part of a provision of this Agreement.

14. **Termination.** Notwithstanding any provision of this Agreement to the contrary, the Counties agree that this Agreement may not be terminated by either party for a period of thirty-five (35) years commencing with the effective date hereof.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK
SIGNATURE PAGES FOLLOW**

WITNESS our hands and seals this __ day of _____, 2010.

OCONEE COUNTY, SOUTH CAROLINA

By: _____
Chairman, County Council
Oconee County, South Carolina

By: _____
Administrator
Oconee County, South Carolina

(SEAL)

ATTEST:

Clerk to County Council
Oconee County, South Carolina

WITNESS our hands and seals this ___ day of _____, 2010.

PICKENS COUNTY, SOUTH CAROLINA

By: _____
Chairman, County Council
Pickens County, South Carolina

By: _____
Administrator
Pickens County, South Carolina

(SEAL)

ATTEST:

Clerk to County Council
Pickens County, South Carolina

EXHIBIT A

To the Agreement for Development of
Joint County Business Park between Oconee County,
South Carolina and Pickens County, South Carolina
Dated as of _____, 2010

The Park is comprised of the following parcels:

All property in Oconee County, South Carolina located on the real property which, as of the date of this Agreement, bears the following Oconee County tax map number(s):

271-00-01-005
271-00-01-001
271-00-01-004
271-00-01-002

- including all property vertically or horizontally located on the Oconee County tax map numbers identified above, including, but not limited to, condominiums or other properties subject to any horizontal property regime, notwithstanding that such property may bears different Oconee County tax map numbers from those identified above; and
- excluding any portion of the real property located on the Oconee County tax map numbers identified above which is taxed on an assessment equal to four percent (4%) of the fair market value of such property pursuant to Section 12-43-220(c), Code of Laws of South Carolina, 1976, as amended, but only during the fiscal years in which such property meets the qualifications of Section 12-43-220(c).



AGENDA ITEM SUMMARY
OCONEE COUNTY, SC

COUNCIL MEETING DATE: April 13, 2010
COUNCIL MEETING TIME: 6:00 PM

ITEM TITLE OR DESCRIPTION:

Second Reading Ordinance 2010-08: AUTHORIZING THE ISSUANCE AND SALE OF GENERAL OBLIGATION REFUNDING BONDS, SERIES 2010, OF OCONEE COUNTY, SOUTH CAROLINA, IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT EXCEEDING \$6,840,000 FOR THE PURPOSE OF REFUNDING CERTAIN OF THE COUNTY'S GENERAL OBLIGATION BONDS; FIXING THE FORM AND CERTAIN DETAILS OF THE BONDS; AUTHORIZING THE CHAIRMAN OF COUNTY COUNCIL AND THE COUNTY ADMINISTRATOR TO DETERMINE CERTAIN MATTERS RELATING TO THE BONDS; PROVIDING FOR THE PAYMENT OF THE BONDS AND THE DISPOSITION OF THE PROCEEDS THEREOF; AND OTHER MATTERS RELATING THERETO.

BACKGROUND OR HISTORY:

Interest rates are at extremely low levels. The County has an opportunity to issue refunding bonds to refinance the current outstanding general obligation debt at a lower interest rate.

SPECIAL CONSIDERATIONS OR CONCERNS:

Public Hearing for bonds is scheduled for April 20, 2010.

COMPLETE THIS PORTION FOR ALL PROCUREMENT REQUESTS:

Does this request follow Procurement Ordinance #2001-15 guidelines? Yes / No [review #2001-15 on Procurement's website]
If no, explain briefly:

STAFF RECOMMENDATION:

Approve second reading of ordinance.

FINANCIAL IMPACT:

The amount of the savings will depend upon the interest rate on the date of sale. We anticipate a savings of at least \$100,000 over the remaining term of the bonds. If the interest rates offered on the date of sale are such that it is not to the County's benefit to issue the bonds, the County will not issue the bonds. The legal and other professional services related to bond issuance are on a contingency basis and the county will not be charged unless a bond is issued.

COMPLETE THIS PORTION FOR ALL GRANT REQUESTS:

Are Matching Funds Available: Yes / No
If yes, who is matching and how much:

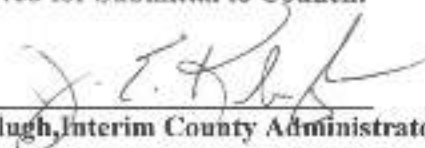
Reviewed By/ Initials:

 M.Burns Bond Attorney Finance Grants Procurement

Submitted or Prepared By:

Approved for Submittal to Council:

 Kendra Brown
Department Head/Elected Official


 J.E. Klugh, Interim County Administrator

Council has directed that they receive their agenda packages a week prior to each Council meeting, therefore, Agenda Items Summaries must be submitted to the Administrator for his review/approval no later than 12 days prior to each Council meeting. It is the Department Head / Elected Officials responsibility to ensure that all approvals are obtained prior to submission to the Administrator for inclusion on an agenda.

A calendar with due dates marked may be obtained from the Clerk to Council



Oconee County - Series 1996, 2001 & 2002 Refunding Report

Calendar Year	Prior Bond Payments			Estimated New Bond Payments			Net Savings
	Principal Portion	Interest Portion	Total	Principal Portion	Interest Portion	Total	
2010	\$500,000	\$141,930	\$641,930	\$525,000	\$90,228	\$615,228	\$26,702
2011	\$800,000	\$228,760	\$1,028,760	\$830,000	\$179,925	\$1,009,925	\$18,835
2012	\$1,230,000	\$185,049	\$1,415,049	\$1,240,000	\$155,025	\$1,395,025	\$20,024
2013	\$590,000	\$147,287	\$737,287	\$595,000	\$117,825	\$712,825	\$24,462
2014	\$625,000	\$120,914	\$745,914	\$625,000	\$98,488	\$723,488	\$22,426
2015	\$655,000	\$92,976	\$747,976	\$645,000	\$78,175	\$723,175	\$24,801
2016	\$695,000	\$63,698	\$758,698	\$680,000	\$55,600	\$735,600	\$23,098
2017	\$730,000	\$52,631	\$782,631	\$710,000	\$28,400	\$738,400	\$24,231
Totals	\$5,825,000	\$1,013,242	\$6,838,242	\$5,850,000	\$803,665	\$6,653,665	\$184,577

Net Savings Amount

Gross Savings: \$184,577
 Present Value Savings: \$183,695
 Present Value Savings %: 3.15%

Interest Rate Reduction

Series 96, 01, 02 Interest Rate: 4.44%
 Series 2010A Interest Rate: 2.99%
 Interest Rate Reduction: 1.45%



**STATE OF SOUTH CAROLINA
OCONEE COUNTY
ORDINANCE NO. 2010-08**

AUTHORIZING THE ISSUANCE AND SALE OF GENERAL OBLIGATION REFUNDING BONDS, SERIES 2010, OF OCONEE COUNTY, SOUTH CAROLINA, IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT EXCEEDING \$6,840,000 FOR THE PURPOSE OF REFUNDING CERTAIN OF THE COUNTY'S GENERAL OBLIGATION BONDS; FIXING THE FORM AND CERTAIN DETAILS OF THE BONDS; AUTHORIZING THE CHAIRMAN OF COUNTY COUNCIL AND THE COUNTY ADMINISTRATOR TO DETERMINE CERTAIN MATTERS RELATING TO THE BONDS; PROVIDING FOR THE PAYMENT OF THE BONDS AND THE DISPOSITION OF THE PROCEEDS THEREOF; AND OTHER MATTERS RELATING THERETO.

Enacted: _____, 2010

BE IT ORDAINED BY THE COUNTY COUNCIL OF OCONEE COUNTY, SOUTH CAROLINA, AS FOLLOWS:

SECTION 1. Definitions. Unless the context shall clearly indicate some other meaning, the terms defined in this Section shall have, for all purposes of this Ordinance, the meanings hereinafter specified, with the definitions equally applicable to both the singular and plural forms and vice versa. The term:

"1996 Bond Ordinance" shall mean the ordinance of the County Council enacted on June 4, 1996, authorizing the issuance and sale of the 1996 Bonds.

"1996 Bonds" shall mean the \$2,800,000 original principal amount General Obligation Bonds, Series 1996, currently outstanding in the principal amount of \$270,000.

"2001 Bond Ordinance" shall mean Ordinance No. 2000-16 of the County Council enacted on October 3, 2000, authorizing the issuance and sale of the 2001 Bonds.

"2001 Bond" shall mean the \$8,000,000 original principal amount General Obligation Bond, Series 2001, currently outstanding in the principal amount of \$4,885,000.

"2002 Bond Ordinance" shall mean the ordinance of the County Council enacted on June 18, 2002, authorizing the issuance and sale of the 2002 Bonds.

"2002 Bonds" shall mean the \$5,000,000 original principal amount General Obligation Bonds, Series 2002, currently outstanding in the principal amount of \$1,310,000.

"Beneficial Owner" shall mean any purchaser who acquires beneficial ownership interest in an Initial Bond held by the Depository. In determining any Beneficial Owner the County, the Registrar and the Paying Agent may rely exclusively upon written representations made and information given to the County, the Registrar and the Paying Agent, as the case may be, by the Depository or its Participants with respect to any Bond held by the Depository or its Participants in which a beneficial ownership interest is claimed.

"Bondholders" or the term "Holders" or any similar term shall mean the registered owner or owners of any outstanding Bond or Bonds.

"Bonds" shall mean the General Obligation Refunding Bonds, Series (year designation), authorized to be issued pursuant to Section 3 hereof.

"Bonds to be Refunded" shall mean, collectively, the 1996 Bonds, 2001 Bonds, and the 2002 Bonds.

"Book-Entry Form" or "Book-Entry System" shall mean with respect to the Bonds, a form or system, as applicable, under which (a) the ownership of beneficial interests in the Bonds may be transferred only through a book-entry and (b) physical Bond certificates in fully-registered form are registered only in the name of the Depository or its nominees as Holder, with the physical Bond

certificates "immobilized" in the custody of the Depository. The book-entry maintained by the Depository is the record that identifies the owners of participatory interests in the Bonds when subject to the Book-Entry System.

"Books of Registry" shall mean the registration books maintained by the Registrar in accordance with Section 9 hereof.

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Constitution" shall mean the Constitution of the State of South Carolina, 1895, as amended.

"County" shall mean Oconee County, South Carolina.

"County Bond Act" shall mean Title 4, Chapter 15 of the S.C. Code.

"County Council" shall mean the County Council of Oconee County, South Carolina.

"Depository" shall mean any securities Depository that is a "clearing corporation" within the meaning of the New York Uniform Commercial Code and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934, operating and maintaining, with its Participants or otherwise, a Book-Entry System to record ownership of beneficial interests in the Bonds, and to effect transfers of the Bonds, in Book-Entry Form, and includes and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.

"Escrow Agent" shall mean the respective paying agents for the Bonds to be Refunded.

"Government Obligations" shall mean any of the following: (1) cash; (2) United States Treasury Obligations – State and Local Government Series; (3) United States Treasury bills, notes, bonds or zero coupon treasury bonds all as traded on the open market; (4) direct obligations of the U.S. Treasury which have been stripped by the Treasury itself, including CATS TIGRS and similar securities; (5) obligations of any agencies or instrumentalities which are backed by the full faith and credit of the United States of America; (6) bonds or debentures issued by any Federal Home Loan Bank or consolidated bonds or debentures issued by the Federal Home Loan Bank Board; or (7) any legally permissible combination of any of the foregoing. Government Obligations must be redeemable only at the option of the holder thereof.

"Initial Bonds" shall mean the Bonds initially issued in Book-Entry Form as provided in Section 4 hereof.

"Interest Payment Dates" shall mean April 1 and October 1 of each year commencing October 1, 2010, or such other date as the Chairman of the County Council determines.

"Ordinance" shall mean this Ordinance.

"Participant" shall mean any bank, brokerage house or other financial institution for which, from time to time, the Depository effects book-entry transfers and pledges of securities deposited with the Depository.

"Paying Agent" shall mean a bank or trust company or the Oconee County Treasurer.

"Record Date" shall mean the fifteenth (15th) day of the month immediately preceding each Interest Payment Date on the Bonds or the date of notice of any proposed redemption, if any, of the Bonds.

"Refunding Act" shall mean Title 11, Chapter 15, Article 5 and Title 21, Chapter 21 of the Code of Laws of South Carolina 1976, as amended.

"Escrow Agreement" shall mean the respective Escrow Agreements dated the date of their execution between the County and the respective Escrow Agent.

"Escrow Fund" shall mean the fund of that name created pursuant to the Escrow Agreement.

"Registrar" shall mean a bank or trust company or the Oconee County Treasurer.

"S.C. Code" shall mean the Code of Laws of South Carolina 1976, as amended.

"State" shall mean the State of South Carolina.

SECTION 2. Findings and Determinations. The County Council hereby finds and determines:

(a) Pursuant to Section 4-9-10 of the S.C. Code, the County operates under the Council-Administrator form of government, and the County Council constitutes the governing body of the County.

(b) Article X, Section 14 of the Constitution provides that each county shall have the power to incur bonded indebtedness in such manner and upon such terms and conditions as the General Assembly shall prescribe by general law. Such debt must be incurred for a public purpose and a corporate purpose in an amount not exceeding eight percent (8%) of the assessed value of all taxable property of such county.

(c) The assessed value of all the taxable property in the County established by the last completed assessment thereof is \$517,993,536 . Eight percent of such sum is \$41,439,482. As of the date hereof, the outstanding general obligation debt of the County subject to the limitations imposed by Article X, Section 14(7)(a) of the Constitution is \$6,465,000, representing the outstanding principal balances of the Bonds to be Refunded. Thus, upon the refunding of all of the Bonds to be Refunded the County may incur not exceeding \$41,439,482 of general obligation debt within its applicable debt limitation.

(d) The Refunding Act authorizes and provides the procedure for the issuance of general obligation bonds whose proceeds are to be used to pay, in whole or in part, sums due on general obligation bonds previously issued and further provides that any issuer (defined to include a County) may issue general obligation bonds to such extent as such issuer shall be indebted by way of principal, interest, and redemption premium upon any outstanding general obligation bonds.

(e) Pursuant to applicable constitutional and statutory authorizations, the County has issued the Bonds to be Refunded. The Bonds to be Refunded are currently outstanding in the principal amount of \$6,465,000. The 1996 Bonds maturing on or after March 1, 2007, are subject to redemption, at the option of the County, on and after March 1 2006 , in whole at any time, or in part from time to time on any Interest Payment Date (as defined in the 1996 Bond Ordinance) at a redemption price equal to 100% of the par amount of the 1996 Bonds to be redeemed, plus accrued interest thereon to the date fixed for redemption. The 2001 Bond maturing subsequent to September 1, 2010, is subject to redemption on or after September 1, 2010, at the option of the County, in whole or in part at any time, at a redemption price equal to 101.5% (if redeemed from September 1, 2010 to August 31, 2011) together with accrued interest thereon to the date fixed for redemption. The 2002 Bonds maturing subsequent to April 1, 2011, are subject to redemption, at the option of the County, on and after April 1, 2011, at any time in whole, or in part, at a redemption price equal to the par amount of the principal amount of the 2002 Bonds to be redeemed, plus accrued interest to the date fixed for redemption.

(f) Based on current market conditions and projections of savings, the County Council finds that it is in the best interest of the County to effect a refunding of the Bonds to be Refunded because a savings can be effected through the refunding and redemption of such Bonds to be Refunded. The County Council recognizes, however, that current market conditions may change and that, as of the date of enactment of this Ordinance, a determination cannot be made as to the amount of such savings, if any, will be realized through the refunding of the Bonds to be Refunded, and that the Chairman of County Council is authorized and empowered to determine certain matters relating to such refunding as set forth in Section 4 of this Ordinance. Because the Refunding Act requires that refunding bonds be sold at public sale there can be no assurance that market conditions at the time of such sale will be similar to the prevailing rates on the date of the enactment of this Ordinance. If the rates of interest on the refunding bonds authorized by this Ordinance, do not result in satisfactory debt service savings, the Chairman of County Council will be empowered to reject bids for the purchase of the refunding bonds.

(g) It is now in the best interest of the County for the County Council to provide for the issuance and sale of general obligation refunding bonds of the County in a principal amount of not exceeding \$6,840,000 pursuant to the aforesaid provisions of the Constitution and laws of the State of South Carolina in order to effect the refunding of any or all of the Bonds to be Refunded.

SECTION 3. Authorization and Details of Bonds. Pursuant to the aforesaid provisions of the Constitution and laws of the State of South Carolina, there is hereby authorized to be issued general obligation refunding bonds of the County (the "Refunding Bonds" or the "Bonds") to effect a refunding of all or any of the Bonds to be Refunded. The Bonds may be issued in one or more series and shall be issued in a principal amount determined by the Chairman of County Council which amount will be sufficient to provide for the payment of the principal of, the redemption

premium and accrued interest on any or all of the Bonds to be Refunded to the respective dates fixed for redemption of any or all of the Bonds to be Refunded and all costs of issuance incurred in connection with the issuance of the Bonds. The Refunding Bonds shall be designated "(principal amount issued) General Obligation Refunding Bonds, Series (year), of Oconee County, South Carolina."

The Bonds shall be issued as fully registered Bonds; shall be dated as of the date of their initial delivery or such other date as the Chairman of County Council determines; shall be in denominations of \$5,000 or any integral multiple thereof not exceeding the principal amount of the Bonds maturing in each year unless issued as a single Bond in the entire principal amount of the issue; shall bear interest (calculated on the basis of a 360-day year comprised of twelve 30-day months) payable on each Interest Payment Dates at such rate or rates as may be determined at the time of the sale thereof by the Chairman of County Council; and shall mature serially in successive annual installments payable on April 1 of each year as determined by the Chairman of County Council pursuant to Section 4 hereof.

SECTION 4. Chairman of County Council to Determine Certain Matters. The Chairman of County Council is hereby authorized and empowered to: (a) determine the original issue date of the Bonds; (b) determine the respective maturities and principal amounts of the Bonds to be Refunded and designate the respective redemption dates thereof; (c) determine the aggregate principal amount of the Bonds to be issued; (d) determine the first Interest Payment Date and the respective maturity dates of the Bonds and the respective principal amounts maturing on such dates; (e) designate the Paying Agent and Registrar for the Bonds; (f) determine the date and time of sale of the Bonds; (g) receive bids on behalf of the County and to award the sale of the Bonds to the lowest bidder therefor, in accordance with the terms of the Notice of Sale for the Bonds, provided that no award shall be made unless the net present value savings attributable to this refunding is in excess of 2.5% of the par amount of the Bonds or the Chairman of County Council determines that a lesser savings amount is in the best interest of the County; (h) make adjustments to the principal amounts of the Bonds immediately following the sale thereof; and (i) negotiate and execute all other contracts which may be necessary or required in connection with the issuance of the Bonds. After the sale of the Bonds, the Chairman of County Council shall submit a written report to the County Council setting forth the results of the sale of the Bonds.

SECTION 5. Redemption of the 1996 Bonds, 2001 Bond and 2002 Bonds. The refunding of any or all of the Bonds to be Refunded shall be effected with a portion of the proceeds of the Bonds which proceeds shall be used for the payment of the principal of such Bonds to be Refunded as and when such Bonds to be Refunded mature and are called for redemption in accordance with the respective provisions of the 1996 Bond Ordinance, the 2001 Bond Ordinance and the 2002 Bond Ordinance, at the redemption price thereof, together with accrued interest on such Bonds to be Refunded to the date fixed for redemption.

Upon the delivery of the Bonds, the principal proceeds thereof, less costs of issuance, shall be deposited with the respective Escrow Agent for the Bonds to be Refunded and held by it under the respective Escrow Agreement in each Escrow Fund.

The Chairman of the County Council are hereby authorized and directed for and on behalf of the County to execute such agreements and give such directions as shall be necessary to carry out the provisions of this Ordinance, including the execution and delivery of the respective Escrow Agreements. The respective Escrow Agreements shall be dated the date of delivery of the Bonds to the initial purchasers thereof.

SECTION 6. Book-Entry Bonds. If requested by the initial purchaser of the Bonds, the Initial Bonds will be eligible securities for the purposes of the Book-Entry System of transfer maintained by the Depository, and transfers of beneficial ownership of the Initial Bonds shall be made only through the Depository and its participants in accordance with rules specified by the Depository. Such beneficial ownership must be of \$5,000 principal amount of Bonds of the same maturity or any integral multiple of \$5,000.

The Initial Bonds will be issued in fully-registered form, as a single Bond representing the entire principal amount of the Bonds or one Bond for each of the maturities of the Bonds, in the name of Cede & Co., as the nominee of the Depository. When any principal of, premium, if any, or interest on the Initial Bonds becomes due, the County shall transmit or cause the Paying Agent to transmit to the Depository an amount equal to such installment of principal, premium, if any, and interest. Such payments will be made to Cede & Co. or other nominee of the Depository as long as it is owner of record on the applicable Record Date. Cede & Co. or other nominee of the Depository shall be considered to be the owner of the Initial Bonds so registered for all purposes of this Ordinance, including, without limitation, payments as aforesaid and receipt of notices. The Depository shall remit such payments to the Beneficial Owners of the Bonds or their nominees in accordance with its rules and regulations.

The Depository is expected to maintain records of the positions of Participants in the Initial Bonds, and the Participants and persons acting through Participants are expected to maintain records of the Beneficial Owners in the Initial Bonds. The County, the Paying Agent and the Registrar make no assurances that the Depository and its Participants will act in accordance with such rules or expectations on a timely basis, and the County, the Paying Agent and the Registrar shall have no responsibility for any such maintenance of records or transfer of payments by the Depository to its Participants, or by the Participants or persons acting through Participants to the Beneficial Owners.

The County, the Paying Agent and the Registrar may treat the Depository (or its nominee) as the sole and exclusive owner of the Bonds registered in its name for the purpose of payment of the principal of or interest on the Bonds, giving any notice permitted or required to be given to Bondholders under this Ordinance, registering the transfer of Bonds, obtaining any consent or other action to be taken by Bondholders and for all other purposes whatsoever, and shall not be affected by any notice to the contrary. The County, the Paying Agent and the Registrar shall not have any responsibility or obligation to any Participant, any person claiming a beneficial ownership interest in the Bonds under or through the Depository or any Participant, or any other person which is not shown on the Books of Registry of the County maintained by the Registrar as being a Bondholder, with respect to: the accuracy of any records maintained by the Depository or any Participant or the maintenance of any records; the payment by the Depository or any Participant of any amount in respect of the principal of or interest on the Bonds; the sending of any transaction statements; the delivery or timeliness or delivery by the Depository or any Participant of any notice which is

permitted or required to be given to Bondholders thereunder; or any consent given or other action taken by the Depository as a Bondholder.

SECTION 7. Successor Depository. If (a) the Depository determines not to continue to act as securities depository for the Bonds and gives reasonable notice to the Registrar and the County, or (b) the County has advised the Depository of the County's determination that the Depository is incapable of discharging its duties, then the County shall attempt to retain another qualified securities depository to replace the Depository. Upon receipt by the County or the Registrar of the Initial Bonds together with an assignment duly executed by the Depository, the County shall execute and deliver to the successor Depository the Bonds of the same principal amount, interest rate, redemption provisions, if any, and maturity. If the County is unable to retain a qualified successor to the Depository, or the County has determined that it is in its best interest not to continue the Book-Entry System of transfer or that interests of the Beneficial Owners of the Bonds might be adversely affected if the Book-Entry System of transfer is continued (the County undertakes no obligation to make any investigation to determine the occurrence of any events that would permit it to make any such determination), and has made provision to so notify Beneficial Owners of the Bonds by mailing an appropriate notice to the Depository, upon receipt by the County of the Initial Bonds together with an assignment duly executed by the Depository, the County shall execute, authenticate and deliver to the Depository Participants' Bonds in fully-registered form, in substantially the form set forth in Section 13 of this Ordinance in the denomination of \$5,000 or any integral multiple thereof.

SECTION 8. Registrar and Paying Agent. Both the principal of and interest on the Bonds shall be payable in any coin or currency of the United States of America which is, at the time of payment, legal tender for public and private debts. The Oconee County Treasurer or a bank designated by the initial purchaser of the Bonds and approved by the Chairman of the County Council may act as Paying Agent and Registrar for the Bonds. In the event the Bonds are issued as a single-fully registered bond, the Oconee County Treasurer may act as Paying Agent and Registrar for the Bonds as determined by the Chairman of the County Council.

SECTION 9. Registration, Transfer and Exchange of Bonds. The County shall cause the Books of Registry to be kept at the offices of the Registrar, for the registration and transfer of the Bonds. Upon presentation at its office for such purpose, the Registrar shall register or transfer, or cause to be registered or transferred, on such Books of Registry, the Bonds under such reasonable regulations as the Registrar may prescribe.

Each Bond shall be transferable only upon the Books of Registry of the County, which shall be kept for such purpose at the principal office of the Registrar, by the registered owner thereof in person or by his duly authorized attorney upon surrender thereof together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or his duly authorized attorney. Upon the transfer of any such Bond, the Registrar on behalf of the County shall issue in the name of the transferee a new fully registered Bond or Bonds of the same aggregate principal amount, interest rate and maturity as the surrendered Bond. Any Bond surrendered in exchange for a new registered Bond pursuant to this Section shall be canceled by the Registrar.

The County, the Registrar and the Paying Agent may deem or treat the person in whose name any fully registered Bond shall be registered upon the Books of Registry as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of the principal of and interest on such Bond and for all other purposes and all such payments so made to any such registered owner or upon his order and shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the County nor the Registrar or the Paying Agent shall be affected by any notice to the contrary. In all cases in which the privilege of transferring Bonds is exercised, the County shall execute and the Registrar shall authenticate and deliver Bonds in accordance with the provisions of this Ordinance. Neither the County nor the Registrar or the Paying Agent shall be obliged to make any such transfer of Bonds during the fifteen (15) days preceding an Interest Payment Date on such Bonds.

SECTION 10. Record Date. The County hereby establishes a record date (the "Record Date") of Bonds, and such Record Date shall be not more than fifteen (15) days preceding an Interest Payment Date on such Bond.

SECTION 11. Mutilation, Loss, Theft or Destruction of Bonds. In case any Bond shall at any time become mutilated in whole or in part, or be lost, stolen or destroyed, or be so defaced as to impair the value thereof to the owner, the County shall execute and the Registrar shall authenticate and deliver at the principal office of the Registrar, or send by registered mail to the owner thereof at his request, risk and expense a new Bond of the same series, interest rate and maturity and of like tenor and effect in exchange or substitution for and upon the surrender for cancellation of such defaced, mutilated or partly destroyed Bond, or in lieu of or in substitution for such lost, stolen or destroyed Bond. In any such event, the applicant for the issuance of a substitute Bond shall furnish the County and the Registrar evidence or proof satisfactory to the County and the Registrar of the loss, destruction, mutilation, defacement or theft of the original Bond, and of the ownership thereof, and also such security and indemnity as may be required by the laws of the State of South Carolina or such greater amount as may be required by the County and the Registrar. Any duplicate Bond issued under the provisions of this Section in exchange and substitution for any defaced, mutilated or partly destroyed Bond or in substitution for any allegedly lost, stolen or wholly destroyed Bond shall be entitled to the identical benefits under this Ordinance as was the original Bond in lieu of which such duplicate Bond is issued, and shall be entitled to equal and proportionate benefits with all the other Bonds of the same series issued hereunder.

All expenses necessary for the providing of any duplicate Bond shall be borne by the applicant therefor.

SECTION 12. Execution of Bonds. The Bonds shall be executed in the name of the County with the manual or facsimile signature of the Chairman of the County Council attested by the manual or facsimile signature of the Clerk to Council under a facsimile of the seal of the County which shall be impressed, imprinted or reproduced thereon. The Bonds shall not be valid or become obligatory for any purpose unless there shall have been endorsed thereon a certificate of authentication. Each Bond shall bear a certificate of authentication manually executed by the Registrar in substantially the form set forth herein.

SECTION 13. Form of Bonds. The Bonds shall be in substantially the following form. In the event the Bonds will be held by a single Bondholder, the form of bond may be revised as a single fully registered Bond for each maturity or a single fully registered Bond which sets forth all maturing principal amounts.

(FORM OF BOND)

UNITED STATES OF AMERICA
STATE OF SOUTH CAROLINA
OCONEE COUNTY, SOUTH CAROLINA
GENERAL OBLIGATION REFUNDING BOND, SERIES 2010

No. R-

<u>INTEREST</u> <u>RATE</u>	<u>MATURITY</u> <u>DATE</u>	<u>ORIGINAL</u> <u>ISSUE DATE</u>	<u>CUSIP</u>
--------------------------------	--------------------------------	--------------------------------------	--------------

%

REGISTERED HOLDER:

PRINCIPAL AMOUNT:

DOLLARS

KNOW ALL MEN BY THESE PRESENTS, that Oconee County, South Carolina (the "County"), is justly indebted and, for value received, hereby promises to pay to the Registered Holder (named above), or registered assigns, the principal amount shown above on the Maturity Date (shown above), upon presentation and surrender of this Bond at the principal office of _____ (the "Paying Agent"), in _____, and to pay interest on such principal sum from the date hereof at the interest rate per annum shown above (calculated on the basis of a 360-day year comprised of twelve 30-day months) until this Bond matures. Interest on this Bond is payable semiannually on April 1 and October 1 of each year commencing _____, until this Bond matures, and shall be payable by check or draft mailed to the person in whose name this Bond is registered on the registration books of the County maintained by the registrar, presently _____ (the "Registrar"), in _____, at the close of business on the fifteenth (15th) day of the calendar month preceding each semiannual interest payment date. The principal and interest on this Bond are payable in any coin or currency of the United States of America which is, at the time of payment, legal tender for public and private debts provided, however, that interest on this fully registered Bond shall be paid by check or draft as set forth above.

This Bond shall not be entitled to any benefit under the Ordinance of the County authorizing the Bonds, nor become valid or obligatory for any purpose, until the Certificate of Authentication hereon shall have been duly executed by the Registrar.

This Bond is one of a series of Bonds of like date of original issue, tenor and effect, except as to date of authentication, number, date of maturity, principal amount, registered holder,

denomination, and rate of interest, aggregating _____ Dollars (\$ _____), issued pursuant to and in accordance with the Constitution and laws of the State of South Carolina, including Article X, Section 15 of the Constitution of the State of South Carolina, 1895, as amended; Title 11, Chapter 15, Article 5, Code of Laws of South Carolina, 1976, as amended; and Ordinance No. ___ duly enacted on ___, 2010 by the County Council of the County (the "Ordinance") for the purpose of effecting refunding of certain outstanding general obligation bonds.

For the payment of the principal and interest of this Bond as they respectively mature and for the creation of such sinking fund as may be necessary to provide for the prompt payment hereof, the full faith, credit, taxing power and resources of the County are hereby irrevocably pledged, and there shall be levied and collected annually upon all taxable property of the County an ad valorem tax, without limitation as to rate or amount, sufficient for such purposes.

This Bond and the series of which it is one are not subject to redemption prior to their stated maturities.

This Bond and the series of which it is one is transferable as provided in the Ordinance, only upon the books of the County kept for that purpose at the principal office of the Registrar by the Registered Holder in person or by his duly authorized attorney upon surrender of this Bond together with a written instrument of transfer satisfactory to the Registrar duly executed by the Registered Holder or his duly authorized attorney. Thereupon, a new fully registered Bond or Bonds of the same aggregate principal amount, interest rate, and maturity shall be issued to the transferee in exchange therefor as provided in the Ordinance. The County, the Registrar and the Paying Agent may deem and treat the person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment of or on account of the principal hereof and interest due hereon and for all other purposes.

Under the laws of the State of South Carolina, this Bond and the interest hereon are exempt from all State, county, municipal, County and other taxes or assessments, except estate or other transfer taxes, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise.

It is hereby certified and recited that all acts, conditions and things required by the Constitution and laws of the State of South Carolina to exist, to happen and to be performed precedent to or in the issuance of this Bond exist, have happened and have been performed in regular and due time, form and manner as required by law; that the amount of this Bond, together with all other indebtedness of the County does not exceed the applicable limitation of indebtedness under the laws of the State of South Carolina; and, that provision has been made for the levy and collection annually upon all taxable property of the County of an ad valorem tax, without limitation as to rate or amount, sufficient for the payment of the principal and interest of this Bond as they respectively mature and for the creation of such sinking fund as may be necessary to provide for the prompt payment thereof.

IN WITNESS WHEREOF, OCONEE COUNTY, SOUTH CAROLINA, has caused this Bond to be signed with the manual/facsimile signature of the Chairman of the County Council of

the County, attested by the manual/facsimile signature of the Clerk to the County Council of the County and the seal of the County impressed, imprinted or reproduced hereon.

OCONEE COUNTY,
SOUTH CAROLINA

Chairman, County Council

(SEAL)

ATTEST:

Clerk, County Council

[FORM OF REGISTRAR'S CERTIFICATE OF AUTHENTICATION]

This Bond is one of the bonds described in the within mentioned Ordinance of Oconee County, South Carolina.

as Registrar

By: _____
Authorized Officer

Date of Authentication:

The following abbreviations, when used in the inscription on the face of this Bond, shall be construed as though they were written out in full according to applicable laws or regulations.

TEN COM - as tenants in common
TEN ENT - as tenants by the
entireties

UNIF GIFT MIN ACT -
Custodian
(Cust) (Minor)

JT TEN - as joint tenants with
right of survivorship
and not as tenants in
common

under Uniform Gifts to
Minors Act _____
(state)

Additional abbreviations may also be used though not in above list.

(FORM OF ASSIGNMENT)

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto _____
(Name and Address of Transferee)

the within Bond and does hereby irrevocably constitute and appoint _____ attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____

Signature Guaranteed

(Authorized Officer)

Notice: Signature must be guaranteed by an institution which is a participant in the Securities Transfer Agents Medallion Program ("STAMP") or similar program.

Notice: The signature to the assignment must correspond with the name of the registered bondholder as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

A copy of the final approving legal opinion to be rendered shall be attached to each Bond and preceding the same a certificate shall appear, which shall be signed on behalf of the County with a facsimile signature of the Clerk to the County Council of the County. Said certificate shall be in substantially the following form:

IT IS HEREBY CERTIFIED that the following is a true and correct copy of the final legal opinion of McNair Law Firm, P.A., Greenville, South Carolina, approving the issue of bonds, of which the within bond is one, the original of which opinion was manually executed, dated and issued as of the date of delivery of and payment for the bonds, and a copy of which is on file with the Oconee County Council, South Carolina.

OCONEE COUNTY, SOUTH CAROLINA

By: _____
Clerk, County Council

SECTION 14. Security for Bonds. The full faith, credit, taxing power and resources of the County are hereby irrevocably pledged for the payment of the principal and interest of the Bonds as they respectively mature and for the creation of such sinking fund as may be necessary to provide for the prompt payment thereof. There shall be levied annually by the Auditor of Oconee

County and collected by the Treasurer of Oconee County upon all taxable property of the County an ad valorem tax, without limitation as to rate or amount, sufficient for such purposes.

The Auditor and Treasurer of Oconee County, South Carolina, shall be notified as to the delivery of and payment for the Bonds and are hereby directed to levy and collect, respectively, upon all taxable property of the County, an ad valorem tax, without limitation as to rate or amount, sufficient to pay the principal and interest of the Bonds as they respectively mature and for the creation of such sinking fund as may be necessary to provide for the prompt payment thereof.

SECTION 15. Defeasance. The obligations of the County under this Ordinance and the pledges, covenants and agreements of the County herein made or provided for, shall be fully discharged and satisfied as to any portion of the Bonds, and such Bond or Bonds shall no longer be deemed to be outstanding hereunder when:

(a) such Bond or Bonds shall have been purchased by the County and surrendered to the County for cancellation or otherwise surrendered to the County or the Paying Agent and is canceled or subject to cancellation by the County or the Paying Agent; or

(b) payment of the principal of and interest on such Bonds either (1) shall have been made or caused to be made in accordance with the terms thereof, or (2) shall have been provided for by irrevocably depositing with the Paying Agent in trust and irrevocably setting aside exclusively for such payment, (a) moneys sufficient to make such payment, or (b) Government Obligations maturing as to principal and interest in such amounts and at such times as will ensure the availability of sufficient moneys to make such payment and all necessary and proper fees, compensation and expenses of the Paying Agent. At such time as the Bonds shall no longer be deemed to be outstanding hereunder, such Bonds shall cease to draw interest from the maturity date thereof and, except for the purposes of any such payment from such moneys or Government Obligations, shall no longer be secured by or entitled to the benefits of this Ordinance.

SECTION 16. Exemption from State Taxes. Both the principal of and interest on the Bonds shall be exempt, in accordance with the provisions of Section 12-2-50 of the S. C. Code from all State, county, municipal, school district and all other taxes or assessments, except estate or other transfer taxes, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise.

SECTION 17. Sale of Bonds, Form of Notice of Sale. The Bonds shall be sold at public sale. A Notice of Sale in the form set forth below shall be distributed to prospective bidders and a summary of such Notice of Sale shall be published in a newspaper having general circulation in the State of South Carolina, not less than seven (7) days prior to the date set for such sale.

The Notice of Sale shall be in substantially the following form:

NOTICE OF SALE

\$ _____ GENERAL OBLIGATION REFUNDING BONDS, SERIES 2010,
OCONEE COUNTY, SOUTH CAROLINA,
STATE OF SOUTH CAROLINA

Time and Place of Sale: NOTICE IS HEREBY GIVEN that bids for the purchase of \$ _____ General Obligation Bonds, Series 2010 of Oconee County, South Carolina (the "Bonds") will be received on behalf of the County Council of the County (the "Council") of Oconee County, South Carolina (the "County"), in the Oconee County Administrative Offices, 415 South Pine Street, Walhalla, South Carolina 29691, until 12:00 Noon, South Carolina time, on _____, 2010, or such other date and time as may be established by the County and communicated by Thomson Municipal Market Monitor not less than 48 hours prior to the time proposals are to be received.

Sealed Bids: Each hand-delivered proposal shall be enclosed in a sealed envelope marked "Proposal for \$ _____ * General Obligation Refunding Bonds, Series 2010, Oconee County, South Carolina" and should be directed to the Chairman of the County Council at the address in the first paragraph hereof.

Facsimile Bids: The County will accept the facsimile transmission of a manually signed Official Bid Form or other form of bid at the risk of the bidder. The County shall not be responsible for the confidentiality of bids submitted by facsimile transmission. Any delay in receipt of a facsimile bid, and any incompleteness or illegible portions of such bid are the responsibility of the bidder. Bids by facsimile should be transmitted to the attention of Kendra Brown, Assistant County Administrator for Administrative and Finance (864. _____).

Electronic Bids: Electronic proposals must be submitted through i-Deal's Parity Electronic Bid Submission System ("Parity"). No electronic bids from any other providers of electronic bidding services will be accepted. Information about the electronic bidding services of Parity may be obtained from i-Deal, 1359 Broadway, 2nd Floor, New York, New York 10018, Customer Support, telephone (212) 849-5021.

E-mail Bids: E-mail proposals may be e-mailed to the attention of Kendra Brown, at email address: kbrown@oconeesc.com.

PROPOSALS MAY BE DELIVERED BY HAND, BY MAIL, BY FACSIMILE TRANSMISSION, BY ELECTRONIC BID OR BY E-MAIL, BUT NO PROPOSAL SHALL BE CONSIDERED WHICH IS NOT ACTUALLY RECEIVED BY THE COUNTY AT THE PLACE, DATE AND TIME APPOINTED, AND THE COUNTY SHALL NOT BE RESPONSIBLE FOR ANY FAILURE, MISDIRECTION, DELAY OR ERROR RESULTING FROM THE SELECTION BY ANY BIDDER OF ANY PARTICULAR MEANS OF DELIVERY OF BIDS.

Book-Entry Only Bonds: The Bonds will be issued in fully registered form. A single Bond or one Bond representing each maturity will be issued to and registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC"), as registered owner of the Bonds, and each such Bond will be immobilized in the custody of DTC. DTC will act as the Depository for the Bonds. Individual purchases will be made in book-entry-only form in the principal amount of \$5,000 or any integral multiple thereof not exceeding the principal amount of Bonds maturing each year; purchasers will not receive physical delivery of certificates representing their interest in the Bonds purchased. The winning bidder, as a condition to delivery of the Bonds, will be required to deposit the Bond certificates representing each maturity with DTC. Notwithstanding the foregoing, at the request of the successful bidder, the Bonds will be issued as one single fully registered bond and not issued through the book-entry system.

Bonds: The Bonds will be issued in fully registered form; will be dated _____ ; will be in denominations of \$5,000 each or any integral multiple thereof not exceeding the principal amount of Bonds maturing each year; and will mature serially in successive annual installments on ___ 1 in each of the years and in the principal amounts as follows:

<u>Year</u>	<u>Principal Amount</u>
-------------	-------------------------

The Bonds will bear interest from the date thereof payable semiannually on April 1 and October 1 of each year commencing _____, 2010. Interest will be calculated on the basis of a 360-day year comprised of twelve 30-day months.

Adjustment of Maturity Schedule. If, after final computation of the proposals, the County determines in its sole discretion that the funds necessary to accomplish the purposes for which the Bonds are being issued are either more or less than the proceeds of the sale of the amount of the Bonds as shown in this Notice of Sale, it reserves the right either to decrease or increase the principal amount of the Bonds (all calculations to be rounded to the near \$5,000), provided that any such decrease or increase shall not exceed 10% of the par amount. Such adjustment(s), if any, shall be made within twenty-four (24) hours of the award of the Bonds. In order to calculate the yield on the Bonds for federal tax law purposes and as a condition precedent to the award of the Bonds, bidders must disclose to the County in connection with their respective bids the price (or yield to maturity) at which each maturity of the Bonds will be reoffered to the public.

In the event of any adjustment of the maturity schedule for the Bonds as described herein, no rebidding or recalculation of the proposals submitted will be required or permitted. Nevertheless, the award of the Bonds will be made to the bidder whose proposal produces the lowest true interest cost solely on the basis of the Bonds offered, without taking into account any adjustment in the amount of the Bonds pursuant to this paragraph. The successful bidder may not withdraw its bid as a result of any changes made within these limits.

Redemption Provisions: The Bonds are not subject to redemption prior to their stated maturities.

Registrar and Paying Agent: The Oconee County Treasurer or a bank designated by the purchaser and approved by the Chairman of the County Council will act as Paying Agent and Registrar for the Bonds.

Bid Requirements: Bidders shall specify the rate or rates of interest per annum which the Bonds are to bear, to be expressed in multiples of 1/20 or 1/8 or 1/100 of 1% with no greater difference than three (3%) percent between the highest and lowest rates of interest named by a bidder. Bidders are not limited as to the number of rates of interest named, but the rate of interest on each separate maturity must be the same single rate for all Bonds of that maturity from their date to such maturity date. A BID FOR LESS THAN ALL THE BONDS OR A PRICE LESS THAN PAR WILL NOT BE CONSIDERED.

Award of Bid: The Bonds will be awarded to the bidder or bidders offering to purchase the Bonds at the lowest true interest cost (TIC) to the County. The TIC will be the nominal interest rate which, when compounded semiannually and used to discount all debt service payments on the Bonds (computed at the interest rates specified in the bid and on the basis of a 360-day year comprised of twelve 30-day months) to the dated date of the Bonds, results in an amount equal to the price bid for the Bonds. In the case of a tie bid, the winning bid will be awarded by lot. The County reserves the right to reject any and all bids or to waive irregularities in any bid. Bids will be accepted or rejected no later than 3:00 p.m., South Carolina time, on the date of the sale.

For the purpose of calculating the yield on the Bonds for Federal tax purposes as a condition precedent to the award of the Bonds, the successful bidder will, within 30 minutes after being notified of its winning bid, advise the County by telephone confirmed by facsimile transmission of the initial offering prices of the Bonds to the public (expressed as a price, exclusive of accrued interest, or yield per maturity).

Good Faith Deposit: No good faith deposit is required.

Bid Form: Each proposal should be enclosed in a sealed envelope marked "Proposal for General Obligation Refunding Bonds, Series 2010, Oconee County, South Carolina" and should be directed to the Chairman of County Council at the address in the first paragraph hereof. It is requested but not required that you submit your bid on the Proposal for Purchase of Bonds supplied with the Official Statement.

Bank Qualified: The County has designated the Bonds as "qualified tax exempt obligations" under Section 265 of the Internal Revenue Code.

Official Statement: The County deems the Preliminary Official Statement to be "final" as described in SEC Rule 15c2-12(b)(1) for the purposes of such Rule. Upon the award of the Bonds, the County will prepare a Final Official Statement (the "Official Statement") in substantially the same form as the Preliminary Official Statement subject to minor additions, deletions and revisions as required to complete the Official Statement. Within seven (7) business days after the award of

the Bonds, the County will provide the successful bidder, a sufficient quantity to comply with Rule G-32 of the Municipal Securities Rulemaking Board. The successful bidder agrees to supply to the County all necessary pricing information and any Underwriter identification necessary to complete the Official Statement within 24 hours after the award of the Bonds.

Continuing Disclosure: In order to assist the bidders in complying with S.E.C. Rule 15c2-12(b)(5), the County will undertake, pursuant to a Continuing Disclosure Certificate, to provide certain annual financial information and notices of the occurrence of certain events if material. A description of this undertaking is set forth in the Preliminary Official Statement and will also be set forth in the Final Official Statement.

Purpose: The Bonds are issued for the purpose of refunding certain outstanding general obligation bonds of the County.

Security: The Bonds shall constitute binding general obligations of the County and the full faith, credit, taxing power and resources of the County are irrevocably pledged for the payment of the bonds and for the creation of such sinking fund as may be necessary to provide for the prompt payment thereof. There shall be levied and collected annually upon all taxable property of the County an ad valorem tax, without limitation as to rate or amount, sufficient for such purposes.

Legal Opinion: The Board shall furnish upon delivery of the Bonds the final approving opinion of the McNair Law Firm, P.A., Greenville, South Carolina, which opinion shall be printed on the back of each Bond, together with the usual closing documents, including a certificate that no litigation is pending affecting the Bonds.

Financial Advisor: Ross, Sinclair & Associates, LLC, has acted as Financial Advisor to the County in connection with the issuance of the Bonds. In this capacity, Ross, Sinclair & Associates, LLC provided technical assistance in the preparation of the offering documents and assisted the County in preparing for this financing. Ross, Sinclair & Associates, LLC, may, through the competitive bidding process, acquire as a principal, or as a participant in a syndicate of underwriters, all or a part of the Bonds including those upon which Ross, Sinclair & Associates, LLC has rendered financial advice. Prior to its participation in the competitive bidding process, Ross, Sinclair & Associates, LLC will obtain the written and express consent of the County to Ross, Sinclair & Associates, LLC's participation in the possible purchase as principal of the Bonds, provided that such bid is submitted electronically only. In the absence of such consent, Ross, Sinclair & Associates, LLC, will not participate in the competitive bidding process.

Certificate as to Issue Price: The successful bidder must provide a certificate to the County by the date of delivery of the Bonds, stating the initial reoffering price of the Bonds to the public (excluding bond houses and brokers) and the price at which a substantial amount of the Bonds were sold to the public, in form satisfactory to Bond Counsel. A sample copy of such a certificate may be obtained from Bond Counsel.

Delivery: The Bonds will be delivered through the facilities of DTC in New York, New York, on or about _____, 2010, at the expense of the County, or at such other place as may be agreed upon with the Purchasers at the expense of the purchaser. The balance of the purchase price

then due (including the amount of accrued interest) must be paid in federal funds or other immediately available funds. Any cost of printing of the Bonds will be borne by the County.

CUSIP Numbers: It is anticipated that CUSIP identification numbers will be printed on the Bonds, but neither the failure to print such numbers on any Bond nor any error with respect thereto shall constitute cause for failure or refusal by the purchaser thereof to accept delivery of and pay for the Bonds in accordance with the terms of its proposal. All expenses in relation to the printing of CUSIP identification numbers on the Bonds shall be paid for by the County; provided, however, that the CUSIP Service Bureau charge for the assignment of said numbers shall be the responsibility of and shall be paid for by the successful bidder.

Additional Information: A copy of the Preliminary Official Statement in deemed final form and the Official Notice of Sale are available via the internet at <http://www.idealprospectus.com> and will be furnished to any person interested in bidding for the Bonds upon request to Bond Counsel. Persons seeking information should communicate with:

Kendra Brown
Assistant County Administrator
of Administrative and Finance
415 South Pine Street
Walhalla, SC 29691
Telephone: 864.638.4235
E-mail: kbrown@oconeesc.com

Daniel R. McLeod, Jr., Esquire
McNair Law Firm, P.A.
Post Office Box 447
Greenville, SC 29602
Telephone: 864.271.4940
Fax: 864.271.4015
E-mail: dmcLeod@mcnair.net

Brian Nurick
Ross, Sinclair & Associates, LLC
1219 Assembly Street, Suite 202
Columbia, SC 29201
Telephone: 800.255.0795
E-mail: bnurick@rsamuni.com

s/

Chairman, County Council, Oconee County, South
Carolina

SECTION 18. Preliminary and Final Official Statement. The Board hereby authorizes and directs the Chairman of County Council to prepare, or cause to be prepared, a Preliminary Official Statement to be distributed to prospective purchasers of the Bonds together with the Notice of Sale. The Board authorizes the Chairman of County Council to designate the Preliminary Official Statement as "near final" for purposes of Rule 15c2-12 of the Securities Exchange Commission. The Chairman of County Council is further authorized to see to the completion of the final form of the Official Statement upon the sale of the Bonds so that it may be provided to the purchaser of the Bonds.

SECTION 19. Continuing Disclosure. The County hereby covenants and agrees that it will comply with and carry out all of the provisions of a Continuing Disclosure Certificate, in substantially the form attached hereto as Exhibit A. Notwithstanding any other provisions of this Ordinance, failure of the County to comply with the Continuing Disclosure Certificate shall not be considered an event of default, and no liability for damages shall attach therefor. The sole remedy for such failure to comply shall be that any Bondholder may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the County to comply with their obligations under this Section.

SECTION 20. Deposit and Use of Proceeds. A portion of the proceeds derived from the sale of the Bonds necessary to provide for the payment of the Bonds to be Refunded shall be deposited with the respective Escrow Agents pursuant to the respective Escrow Agreements. The remaining proceeds, if any, shall be deposited with the Treasurer of Oconee County in a special fund to the credit of the County and shall be applied solely to the purposes for which the Bonds have been issued, including payment of costs of issuance of the Bonds, except that the accrued interest, if any, shall be used to discharge in part the first interest to become due on the Bonds.

SECTION 21. Federal Tax Covenants. The County hereby covenants and agrees with the holders of the Bonds that it will not take any action which will, or fail to take any action which failure will, cause interest on the Bonds to become includable in the gross income of the bondholders for federal income tax purposes pursuant to the provisions of the Code and regulations promulgated thereunder in effect on the date of original issuance of the Bonds and that no use of the proceeds of the Bonds shall be made which, if such use had been reasonably expected on the date of issue of the Bonds would have caused the Bonds to be "arbitrage bonds", as defined in the Code, and to that end the County hereby shall:

(a) comply with the applicable provisions of Section 103 and Sections 141 through 150 of the Code and any regulations promulgated thereunder so long as the Bonds are outstanding;

(b) establish such funds, make such calculations and pay such amounts, in the manner and at the times required in order to comply with the requirements of the Code relating to required rebates of certain amounts to the United States; and

(c) make such reports of such information at the time and places required by the Code.

SECTION 22. Designation of Bonds. The County covenants that, in accordance with the provisions of the Code, the Bonds are designated as "qualified tax-exempt obligations" as defined in the Code. The County and all subordinate entities thereof do not anticipate to issue more than \$30,000,000 in tax-exempt bonds or other tax-exempt obligations in 2010 other than private activity bonds except for qualified 501(c)(3) bonds. The County represents that the sum of all tax-exempt obligations (other than private activity bonds which are not qualified as 501(c)(3) bonds) issued by the County and all subordinate entities thereof during calendar year 2010 is not reasonably expected to exceed \$30,000,000.

SECTION 23. Notice of Public Hearing. The Council hereby ratifies and approves the publication of a notice of public hearing regarding the Bonds and this Ordinance, such notice in the form attached hereto as Exhibit B, having been published in the *Seneca Daily Journal* and *Keowee Courier*, newspapers of general circulation in the County, not less than 15 days prior to the date of such public hearing.

SECTION 24. Filings with Central Repository. In accordance with Section 11-1-85 of the S. C. Code, the County covenants that it will file or cause to be filed with a central repository for further availability in the secondary bond market when requested: (a) a copy of the annual audit of the County within thirty (30) days of the County's receipt thereof; and (b) within thirty (30) days of the occurrence thereof, relevant information of an event which, in the opinion of the County, adversely affects more than five (5%) of the County's revenue or its tax base.

SECTION 25. Miscellaneous. The County Council hereby authorizes the Interim County Administrator to retain McNair Law Firm, P.A. as bond counsel, and Ross, Sinclair & Associates, LLC, as Financial Advisor, in connection with the issuance of the Bonds. The County Council further authorizes the Chairman of County Council, Interim County Administrator and the Assistant County Administrator for Administration, the Clerk to County Council and the County Administrator to execute such documents and instruments as may be necessary to effect the issuance of the Bonds or make modifications in any documents including but not limited to the form of the Bond or Notice of Sale. The County Council hereby authorizes the Chairman to County Council, with the assistance of the Financial Advisor, to negotiate the terms of, and execute in the name and on behalf of the County, investment agreements, forward delivery agreements, repurchase agreements and other agreements in connection with the Bonds, to prepare and solicit bids for providers of such agreements and to execute, in the name and on behalf of the County, written confirmations of any such agreements and other documents as may be necessary in connection therewith.

SECTION 26. Repeal of Conflicting Ordinances. All rules, regulations, ordinances, and parts thereof, procedural or otherwise, in conflict herewith or the proceedings authorizing the issuance of the Bonds are, to the extent of such conflict, hereby repealed and this Ordinance shall take effect and be in full force from and after its adoption.

[Signature page follows]

Enacted by the County Council of Oconee County, South Carolina, this ____ day of _____, 2010.

OCONEE COUNTY, SOUTH CAROLINA

(SEAL)

Chairman, County Council
Oconee County, South Carolina

ATTEST:

Administrator, Oconee County, South Carolina

Clerk to County Council,
Oconee County, South Carolina

Date of First Reading: March 16, 2010
Date of Second Reading: April 6, 2010
Date of Public Hearing: April 20, 2010
Date of Third Reading: April __, 2010

[Signature page]

FORM OF CONTINUING DISCLOSURE CERTIFICATE

This Continuing Disclosure Certificate (the "Disclosure Certificate") is executed and delivered by Oconee County, South Carolina (the "County"), in connection with the issuance of \$_____ General Obligation Refunding Bonds, Series 2010 (the "Bonds"). The Bonds are being issued pursuant to Ordinance No. ___ enacted by the County Council of the County on _____, 2010 (the "Ordinance"). The County covenants and agrees as follows:

SECTION 1. Purpose of the Disclosure Certificate. This Disclosure Certificate is being executed and delivered by the County for the benefit of the Holders or Beneficial Owners (defined below) and in order to assist the Participating Underwriters (defined below) in complying with the Rule (defined below).

SECTION 2. Definitions. The following capitalized terms shall have the following meanings:

"Annual Report" shall mean any Annual Report provided by the County pursuant to, and as described in, Sections 3 and 4 of this Disclosure Certificate.

"Beneficial Owner" shall mean any person which (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories, or other intermediaries), or (b) is treated as the owner of any Bonds for federal income tax purposes.

"Bonds" shall mean the \$_____ General Obligation Refunding Bonds, Series 2010, Oconee County, South Carolina, dated _____, 2010.

"Dissemination Agent" shall mean the County or any successor Dissemination Agent designated in writing by the County and which has filed with the County a written acceptance of such designation.

"Holders" or "Holders of the Bonds" shall mean the registered owners of the Bonds.

"Listed Events" shall mean any of the events listed in Section 5(a) of this Disclosure Certificate.

"National Repository" shall mean the Municipal Securities Rulemaking Board, or any other information repository designated by the Securities and Exchange Commission for purposes of receiving information reports pursuant to the Rule.

"Official Statement" shall mean the official statement of the County dated _____, 2010, prepared in connection with the issuance of the Bonds.

"Participating Underwriter" shall mean the original underwriter(s) of the Bonds required to comply with the Rule in connection with offering of the Bonds.

"Repository" shall mean the National Repository and each State Depository, if any.

"Rule" shall mean Rule 15c2-12(h)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

"State Depository" shall mean any public or private repository or entity designated by the State of South Carolina as a state depository for the purpose of the Rule. As of the date of this Certificate, there is no State Depository.

SECTION 3. Provision of Annual Reports.

(a) The County shall, or shall cause the Dissemination Agent to provide, not later than February 1 of each year, commencing in 2011, to each Repository an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Certificate. Not later than fifteen (15) business days prior to such date the County shall provide the Annual Report to the Dissemination Agent, if other than the County; provided, that if the audited financial statements required pursuant to Section 4 hereof to be included in the Annual Report are not available for inclusion in the Annual Report as of such date, unaudited financial statements of the County may be included in such Annual Report in lieu thereof, and the County shall replace such unaudited financial statements with audited financial statements within fifteen (15) days after such audited financial statements become available for distribution. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4 of this Disclosure Certificate; provided that the audited financial statements of the County may be submitted separately from the balance of the Annual Report.

(b) If the County is unable to provide to the Repositories an Annual Report by the date required in subsection (a), the County shall send a notice to the Municipal Securities Rulemaking Board and State Depository, if any, in substantially the form attached hereto as Exhibit A.

(c) The Dissemination Agent shall:

(1) determine each year prior to the date for providing the Annual Report the name and address of each National Repository and each State Depository, if any; and

(2) if the Dissemination Agent is other than the County, file a report with the County and (if the Dissemination Agent is not the Registrar) the Registrar certifying whether the

Annual Report has been provided pursuant to this Disclosure Certificate, and, if provided, stating the date it was provided, and listing all the Repositories to which it was provided.

SECTION 4. Content of Annual Reports. The County's Annual Report shall contain or incorporate by reference the following:

(a) The audited financial statements of the County for the prior fiscal year, prepared in accordance with generally accepted accounting principles as promulgated to apply to governmental entities from time to time by the Governmental Accounting Standards Board (or if not in conformity, to be accompanied by a qualitative discussion of the differences in the accounting principles and the impact of the change in the accounting principles on the presentation of the financial information). If the County's audited financial statements are not available by the time the Annual Report is required to be filed pursuant to Section 3(a), the Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the final Official Statement, and the audited financial statements shall be filed in the same manner as the Annual Report when they become available.

(b) Financial information relating to the County's General Fund revenues and expenditures for the previous five fiscal years, prepared substantially in the form of and updating the table appearing in the Official Statement under the heading "FINANCIAL INFORMATION – General Fund – Five Year Summary."

(c) Information concerning the County's budget for the fiscal year in which the Annual Report is issued, prepared substantially in the form of the summary shown in the Official Statement under the heading, "FINANCIAL INFORMATION – Current Budget."

(d) Information concerning the assessed value of taxable real and personal property in the County for each of the five previous fiscal years and, if available from the office of the Auditor of Oconee County, an estimate for the fiscal year in which the Annual Report is issued, prepared substantially in the form of and updating the tables shown in the Official Statement under the heading, "TAX INFORMATION- Assessed Value of Taxable Property."

(e) (i) Information concerning the ad valorem property taxes collected for the County for each of the five previous fiscal years prepared substantially in the form of and updating the table shown in the Official Statement under the heading, "TAX INFORMATION- Tax Collections"; and (ii) information concerning the ten largest taxpayers in the County and the amounts of County taxes paid during the previous fiscal year, prepared substantially in the form of the table shown in the Official Statement under the heading, "TAX INFORMATION – Ten Largest Taxpayers in the County."

(f) Information showing the legal debt limit of the County as of June 30 of the previous fiscal year or some later date, substantially in the form shown in the Official Statement under the heading, "DEBT STRUCTURE – Legal Debt Limit of the County," and (ii) information showing the outstanding indebtedness of the County, including long-term lease obligations and other long-term liabilities, as of June 30 of the previous fiscal year or some later date, substantially in the form of and updating the table and information in the Official Statement

under the heading, "DEBT STRUCTURE – Outstanding Indebtedness – Description of General Obligation Indebtedness by Issue – Capital Lease Obligations – Revenue Bonds," and the composite debt service table in the Official Statement under the heading, "DEBT STRUCTURE – Composite Debt Service."

Any or all of the items listed above may be incorporated by reference from other documents, including official statements of debt issues with respect to which the County is an "obligated person" (as defined by the Rule), which have been filed with each of the Repositories or the Securities and Exchange Commission. If the document incorporated by reference is a final official statement, it must be available from the Municipal Securities Rulemaking Board. The County shall clearly identify each such other document so incorporated by reference.

SECTION 5. Reporting of Significant Events.

(a) Pursuant to the provisions of this Section 5, the County shall give, or cause to be given, in a timely manner, (i) to each National Repository or to the Municipal Securities Rulemaking Board, and (ii) to the State Depository, if any, notice of the occurrence of any of the following events with respect to the Bonds, if material:

- (1) Principal and interest payment delinquencies;
- (2) Non-payment related defaults;
- (3) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) Substitution of credit or liquidity providers, or their failure to perform;
- (6) Adverse tax opinions or events affecting the tax-exempt status of the security;
- (7) Modifications to rights of security holders;
- (8) Bond calls;
- (9) Defeasances;
- (10) Release, substitution, or sale of property securing repayment of the securities; and
- (11) Rating changes.

(b) If the County has determined that the occurrence of a Listed Event would be material the County shall promptly file a notice of such occurrence with the Municipal Securities Rulemaking Board and each State Depository. Notwithstanding the foregoing, notice of Listed Events described in subsections (a) 8 and 9 above need not be given under this subsection any earlier than the notice (if any) of the underlying event is given to owners of affected Bonds.

SECTION 6. Termination of Reporting Obligation. The County's obligations under this Disclosure Certificate shall terminate upon the legal defeasance, prior redemption or payment in full of the Bonds. If such termination occurs prior to the final maturity of the Bonds, the County shall give notice of such termination in the same manner as for a Listed Event under Section 5(b).

SECTION 7. Dissemination Agent. The County may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Certificate, and may discharge any such Agent, with or without appointing a successor Dissemination Agent. The initial Dissemination Agent shall be the County.

SECTION 8. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Certificate, the County may amend this Disclosure Certificate and any provision of this Disclosure Certificate may be waived, if such amendment or waiver is supported by an opinion of counsel expert in federal securities laws acceptable to the County, to the effect that such amendment or waiver would not, in and of itself, cause the undertakings herein to violate the Rule if such amendment or waiver had been effective on the date hereof but taking into account any subsequent change in or official interpretation of the Rule.

SECTION 9. Additional Information. Nothing in this Disclosure Certificate shall be deemed to prevent the County from disseminating any other information, using the means of dissemination set forth in this Disclosure Certificate or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Certificate. If the County chooses to include any information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is specifically required by this Disclosure Certificate, the County shall have no obligation under this Certificate to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

SECTION 10. Default. In the event of a failure of the County, or the Dissemination Agent to comply with any provision of this Disclosure Certificate, any beneficial owner may take such actions as may be necessary and appropriate, including seeking injunctive relief or specific performance by court order, to cause the County, or the Dissemination Agent, as the case may be, to comply with its obligations under this Disclosure Certificate. A default under this Disclosure Certificate shall not be deemed an event of default under the Ordinance, and the sole remedy under this Disclosure Certificate in the event of any failure of the County, or the Dissemination Agent to comply with this Disclosure Certificate shall be an action to compel performance.

SECTION 11. Beneficiaries. This Disclosure Certificate shall inure solely to the benefit of the County, the Dissemination Agent, the Participating Underwriters, and Holders from time to time of the Bonds and shall create no rights in any other person or entity.

SECTION 12. Counterparts. This Disclosure Certificate may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

OCONEE COUNTY, SOUTH CAROLINA

By: _____

Dated: _____, 2010

EXHIBIT A

NOTICE TO REPOSITORIES OF FAILURE TO FILE ANNUAL REPORT

Name of Issuer: Oconee County, South Carolina
Name of Bond Issue: \$_____ General Obligation Refunding Bonds, Series 2010,
Oconee County, South Carolina
Date of Issuance: _____

NOTICE IS HEREBY GIVEN that Oconee County, South Carolina (the "County") has not provided an Annual Report with respect to the above-named Bonds as required by Sections 3 and 4 of the Continuing Disclosure Certificate executed and delivered by the County as Dissemination Agent. The County has notified us in writing that the Annual Report will be filed by _____.

Dated: _____

OCONEE COUNTY, SOUTH CAROLINA

Exhibit B

NOTICE OF PUBLIC HEARING

Notice is hereby given that a public hearing will be held by the County Council of Oconee County, South Carolina (the "County"), during the 6:00 p.m. meeting of Oconee County Council on April 20, 2010, at the Council Chamber of Oconee County Council, 415 South Pine Street, Walhalla, South Carolina.

The purpose of the public hearing is to consider an Ordinance authorizing the County to issue not exceeding \$6,840,000 General Obligation Refunding Bonds, Series 2010, the proceeds of which will be applied to defray the costs of refunding the County's \$2,800,000 original principal amount General Obligation Bonds, Series 1996; \$8,000,000 original principal amount General Obligation Bonds, Series 2001; and \$5,000,000 original principal amount General Obligation Bonds, Series 2002.

The full faith, credit, taxing power and resources of the County will be pledged for the payment of the principal and interest on the Bonds as they respectively mature and for the creation of such sinking fund as may be necessary to provide for the payment thereof. There shall be levied annually by the County Auditor and collected by the County Treasurer upon all taxable property of the County an ad valorem tax, without limitation as to rate or amount, sufficient for such purposes.

At the public hearing all taxpayers and residents of the County and any other interested persons who appear will be given an opportunity to express their views for or against the Ordinance and the issuance of the Bonds.

Oconee County Council, South Carolina

**AGENDA ITEM SUMMARY
OCONEE COUNTY, SC**

COUNCIL MEETING DATE: April 6, 2010
COUNCIL MEETING TIME: 7:00 PM

ITEM TITLE OR DESCRIPTION:

First Reading (in Caption Only) of **ORDINANCE 2010-09: AN ORDINANCE OF OCONEE COUNTY, SOUTH CAROLINA, TO ESTABLISH PROCEDURES AND REQUIREMENTS FOR THE CONSIDERATION OF AND THE ENTERING INTO DEVELOPMENT AGREEMENTS**

BACKGROUND OR HISTORY:

Title 6 Chapter 31 of the SC Code of Laws (the Local Governmental Development Agreement Act) authorizes counties to enter into development agreements with developers, provided an appropriate ordinance establishing the procedures and requirements for agreements is first adopted by County Council. The Keowee River Preservation Group, LLC, has requested Council consider entering into such an agreement for the Keowee River Development, a planned development of approximately 774 acres in Oconee County, which is expected to require up to 20 years to complete. Ordinance 2010-09 would put in place the required elements for Oconee County, should it desire, to enter into this and future development agreements.

SPECIAL CONSIDERATIONS OR CONCERNS:

If adopted, Ordinance 2010-09 would only enable Oconee County to enter into development agreements- *it would not constitute an approval of any particular agreement.*

COMPLETE THIS PORTION FOR ALL PROCUREMENT REQUESTS:

Does this request follow Procurement Ordinance #2001-15 guidelines? Yes / No [review #2001-15 on Procurement's website]
If no, explain briefly:

STAFF RECOMMENDATION:

Take First Reading in Caption Only, and refer to the Planning Commission for review.

FINANCIAL IMPACT:

COMPLETE THIS PORTION FOR ALL GRANT REQUESTS:

Are Matching Funds Available: Yes / No
If yes, who is matching and how much:

ATTACHMENTS

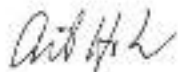
None

Reviewed By/ Initials:

_____ County Attorney _____ Finance _____ Grants _____ Procurement

Submitted or Prepared By:

Approved for Submittal to Council:



Department Head/Elected Official



J.E. Klugh, Interim County Administrator

Council has directed that they receive their agenda packages a week prior to each Council meeting, therefore, Agenda Items Summaries must be submitted to the Administrator for his review/approval no later than 12 days prior to each Council meeting. It is the Department Head / Elected Officials responsibility to ensure that all approvals are obtained prior to submission to the Administrator for inclusion on an agenda.

A calendar with due dates marked may be obtained from the Clerk to Council.

AGENDA ITEM SUMMARY
OCONEE COUNTY, SC

COUNCIL MEETING DATE: April 6, 2010
COUNCIL MEETING TIME: 7:00 PM

ITEM TITLE OR DESCRIPTION:

First Reading (in Caption Only) of ORDINANCE 2010-10: AN ORDINANCE OF OCONEE COUNTY, SOUTH CAROLINA APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF A DEVELOPMENT AGREEMENT BY AND BETWEEN OCONEE COUNTY AND KEOWEE RIVER PRESERVATION GROUP, LLC, WHEREBY CERTAIN PROPERTY WILL BE SUBJECT TO CERTAIN DEVELOPMENT STANDARDS; AND OTHER MATTERS RELATED THERETO

BACKGROUND OR HISTORY:

Keowee River Preservation Group, LLC, has requested Council consider entering into a development agreement that would vest the developer under a set of standards governing the development of the proposed Keowee River project, a 774 acre mixed-use development in Oconee County, for the life of the agreement. This would provide the developer greater certainty in designing the various phases of the development, which is projected to require up to 20 years. If approved, the agreement would negate the need to obtain a series of variances related to road design, as well as impose design standards on a number of elements of the project, some of which are currently not regulated by Oconee County. Staff have reviewed the proposed standards, and have identified no obvious safety issues resulting from the requested variances. It should be noted that the agreement would not waive any fire or building codes, and all plans would be reviewed for strict compliance with the standards established.

SPECIAL CONSIDERATIONS OR CONCERNS:

Two public hearings are required for the agreement; one by Council, and one by the Planning Commission.

STAFF RECOMMENDATION:

Take First Reading in Caption Only, and refer to the Planning Commission for review and the required public hearing.

FINANCIAL IMPACT:

None anticipated.

ATTACHMENTS

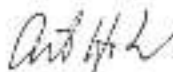
None.

Reviewed By/ Initials:


_____ County Attorney _____ Finance _____ Grants _____ Procurement

Submitted or Prepared By:

Approved for Submittal to Council:



Department Head/Elected Official


J.E. Klugh, Interim County Administrator

Council has directed that they receive their agenda packages a week prior to each Council meeting, therefore, Agenda Items Summaries must be submitted to the Administrator for his review/approval no later than 12 days prior to each Council meeting. It is the Department Head / Elected Officials responsibility to ensure that all approvals are obtained prior to submission to the Administrator for inclusion on an agenda.

A calendar with due dates marked may be obtained from the Clerk to Council.

**AGENDA ITEM SUMMARY
OCONEE COUNTY, SC**

COUNCIL MEETING DATE: April 13, 2010
COUNCIL MEETING TIME: 6:00 PM

ITEM TITLE OR DESCRIPTION:

First Reading (In Caption Only) of Ordinance 2010-15: An Ordinance to Amend the Zoning Enabling Ordinance Pursuant to a Citizen-Initiated Rezoning Request

BACKGROUND OR HISTORY:

The proposed Ordinance 2010-15 stems from a citizen-initiated rezoning request submitted by Mr. Jim Codner. It should be noted that the area delineated in this request constitutes the first phase of the overall rezoning proposal, and contains slightly less than 1/3 of the total parcels to be considered (the balance of the proposal is planned to be presented in 2 additional requests in the near future). The request includes 253 parcels located north of Cane Creek, near Ebenezer Road, and was accompanied by the signatures of approximately 68% of the parcel owners. As submitted, 250 parcels would be rezoned into the Lake Residential District (LRD), and 3 parcels would be rezoned into the Residential District (RD).

SPECIAL CONSIDERATIONS OR CONCERNS:

13 parcels identified in Ordinance 2010-15 are also proposed for rezoning as part of the request to be considered in Ordinance 2010-16. Staff will present recommendations to address this and various other concerns at time of Planning Commission review.

COMPLETE THIS PORTION FOR ALL PROCUREMENT REQUESTS:

Does this request follow Procurement Ordinance #2001-15 guidelines? Yes / No [review #2001-15 on Procurement's website]
If no, explain briefly: N/A

STAFF RECOMMENDATION:

Take First Reading (In Caption Only) of Ordinance 2010-15, and refer the matter to the Planning Commission for the required review.

FINANCIAL IMPACT:

None Anticipated

COMPLETE THIS PORTION FOR ALL GRANT REQUESTS:

Are Matching Funds Available: Yes / No
If yes, who is matching and how much: N/A

ATTACHMENTS

Map of rezoning proposal as submitted.

Reviewed By/ Initials:

_____ County Attorney _____ Finance _____ Grants _____ Procurement

Submitted or Prepared By:

[Signature]

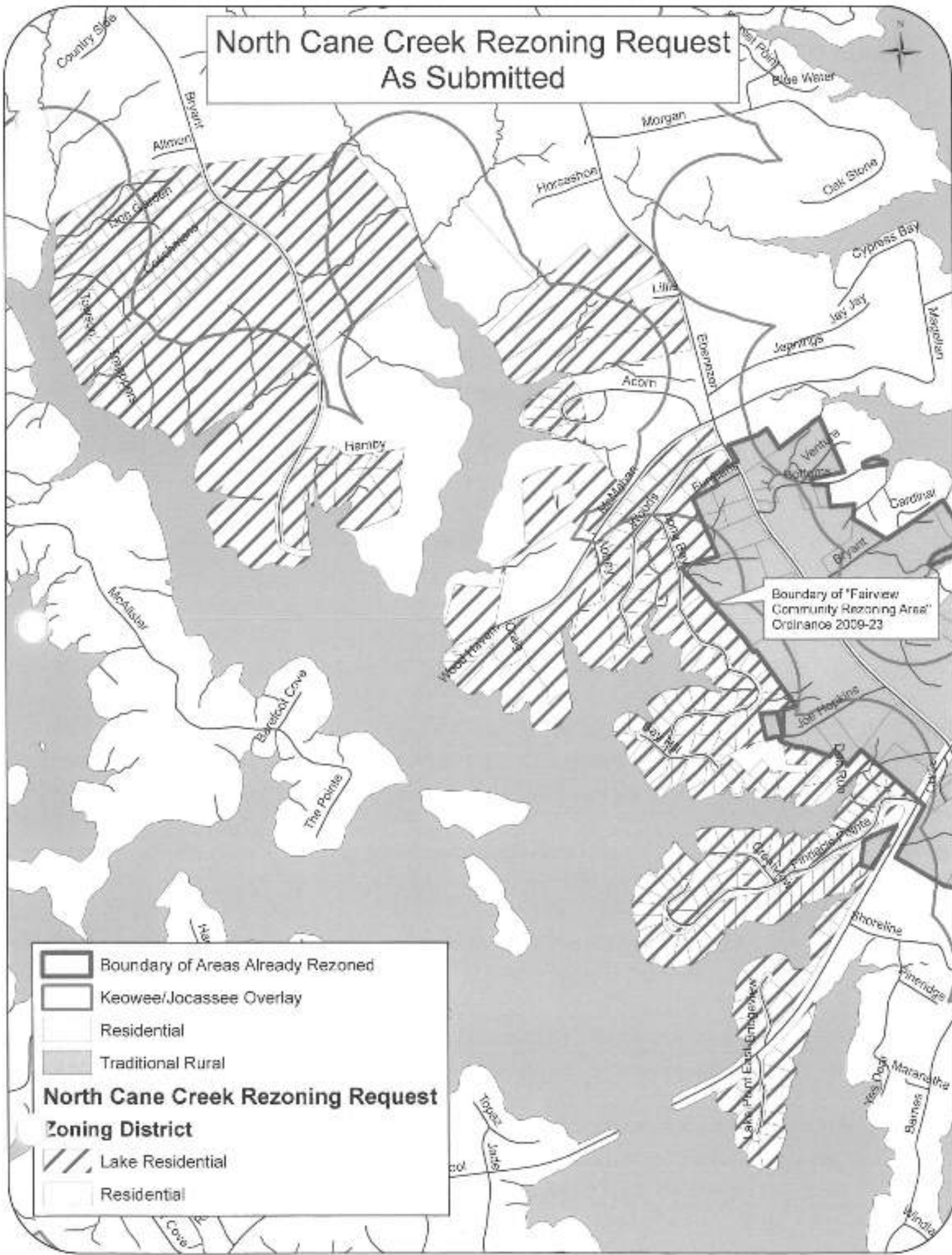
Department Head/Elected Official

Approved for Submittal to Council:

[Signature]

J.E. Klugh, Interim County Administrator

North Cane Creek Rezoning Request As Submitted



Boundary of "Fairview
Community Rezoning Area"
Ordinance 2009-23

	Boundary of Areas Already Rezoned
	Keowee/Jocassee Overlay
	Residential
	Traditional Rural
North Cane Creek Rezoning Request	
Zoning District	
	Lake Residential
	Residential

AGENDA ITEM SUMMARY
OCONEE COUNTY, SC

COUNCIL MEETING DATE: April 13, 2010
COUNCIL MEETING TIME: 6:00 PM

ITEM TITLE OR DESCRIPTION:

First Reading (In Caption Only) of Ordinance 2010-16: An Ordinance to Amend the Zoning Enabling Ordinance Pursuant to a Citizen-Initiated Rezoning Request

BACKGROUND OR HISTORY:

The proposed Ordinance 2010-16 stems from a citizen-initiated rezoning request submitted by Ms. Jean Jennings. The request consists of 56 parcels in the Control Free District, located near Ebenezer Road in the Fairview Community, near Lake Keowee, and proposes the rezoning of 53 parcels into the Traditional Rural District (TRD), and 3 parcels into the Residential District (RD). Petitions containing the signatures of approximately 83% of the owners of the parcels in the request area were submitted in support of the proposal.

SPECIAL CONSIDERATIONS OR CONCERNS:

13 parcels identified in Ordinance 2010-16 are also proposed for rezoning as part of the request to be considered in Ordinance 2010-15. Staff will present recommendations to address this and various other concerns at time of Planning Commission review.

COMPLETE THIS PORTION FOR ALL PROCUREMENT REQUESTS:

Does this request follow Procurement Ordinance #2001-15 guidelines? Yes / No [review #2001-15 on Procurement's website]
If no, explain briefly: N/A

STAFF RECOMMENDATION:

Take First Reading (In Caption Only) of Ordinance 2010-15, and refer the matter to the Planning Commission for the required review.

FINANCIAL IMPACT:

None Anticipated

COMPLETE THIS PORTION FOR ALL GRANT REQUESTS:

Are Matching Funds Available: Yes / No
If yes, who is matching and how much: N/A

ATTACHMENTS

Map of rezoning proposal as submitted.

Reviewed By/ Initials:

_____ County Attorney _____ Finance _____ Grants _____ Procurement

Submitted or Prepared By:

[Signature]

Department Head/Elected Official

Approved for Submittal to Council:

[Signature]

J.E. Klugh, Interim County Administrator

Council has directed that they receive their agenda packages a week prior to each Council meeting, therefore, Agenda Items Summaries must be submitted to the Administrator for his review/approval no later than 12 days prior to each Council meeting. It is the Department Head / Elected Officials responsibility to ensure that all approvals are obtained prior to submission to the Administrator for inclusion on an agenda.

A calendar with due dates marked may be obtained from the Clerk to Council.



AGENDA ITEM SUMMARY
OCONEE COUNTY, SC

COUNCIL MEETING DATE: April 6, 2010
COUNCIL MEETING TIME: 7:00 PM

ITEM TITLE OR DESCRIPTION:

Approve Change Order #2 in the amount of \$38,362.00 for grading and stone required for the parking lot of the Tri County Tech Quick Job Development Center, to Joy Construction of Seneca, SC.

BACKGROUND OR HISTORY:

Oconee County received a Community Development Block Grant (CDBG) in the amount of \$986,364 for the purpose of building a workforce training facility in Oconee County. Construction is complete on the building located at the Hamilton Career Center and classes are scheduled to begin on April 5, 2010. The original bid for construction was approved by County Council on July 7, 2009, in the amount of \$504,504.00, with a 20% additional amount for anticipated change orders, bringing the approved total to \$605,404.00. Change Order #1 in the amount of \$98,467.09 covered additional items that were added to enhance the building efficiency and security. This brought the job total to \$602,971.09 which did not exceed the approved amount. This second Change Order was necessary in order to complete the paving of the parking lot. Due to the large amount of rain it was necessary for Joy Construction to remove 80 loads of wet dirt and replace it with 56 loads of gravel/stone in order to complete the paving on time. The amount of this second change order exceeded the originally approved 20% and now requires Council approval. It will bring the total amount of this project to \$641,333.09, well under the total grant amount of \$986,364.

SPECIAL CONSIDERATIONS OR CONCERNS:

The SC Department of Commerce has already given their approval for this Change Order, see letter attached.

COMPLETE THIS PORTION FOR ALL PROCUREMENT REQUESTS:

Does this request follow Procurement Ordinance #2001-15 guidelines? Yes

STAFF RECOMMENDATION:

Approve Change Order #2 in the amount of \$38,362.00 for grading and stone required for the parking lot of the Tri County Tech Quick Job Development Center, to Joy Construction of Seneca, SC.

FINANCIAL IMPACT:

Funding for this project is provided by a federally funded Community Development Block Grant (CDBG) from the SC Department of Commerce in the amount of \$986,364 and matching funds from Tri County Technical College in the amount of \$246,036. No County funds will be utilized for this project.

ATTACHMENTS

1. Change Order # 2
2. Approval letter from SC Department of Commerce

Reviewed By/ Initials:

_____ County Attorney _____ Finance KRW Grants PC Procurement

Submitted or Prepared By:

Robyn Courtney
Department Head/Elected Official

Approved for Submittal to Council:

Gene Klugh
Gene Klugh, Interim County Administrator

Council has directed that they receive their agenda packages a week prior to each Council meeting, therefore, Agenda Items Summaries must be submitted to the Administrator for his review/approval no later than 12 days prior to each Council meeting. It is the Department Head / Elected Officials responsibility to ensure that all approvals are obtained prior to submission to the Administrator for inclusion on an agenda.

A calendar with due dates marked may be obtained from the Clerk to Council.



Mark Sanford
Governor

SOUTH CAROLINA
DEPARTMENT OF COMMERCE

Joe E. Taylor, Jr.
Secretary

March 25, 2010

Mr. J. E. Klugh
Interim Administrator, Oconee County
415 South Pine Street
Walhalla, South Carolina 29691-2145

Re: Change Order #2 (+) \$38,362.00

Grantee:	Oconee County
Contractor:	Joy Construction Company
Project Title:	QuickJobs Development Center
CDBG Number:	4-W-07-005
Current Dollar Amount:	\$602,971.09
Revised Amount:	\$641,333.09

Dear Mr. Klugh:

We have received written notification and supporting documentation for a change order related to construction services in the above referenced project. This change order increases the total contract amount to \$641,333.09. Approval is hereby given for the requested changes.

Please be advised that all CDBG Contract Special Provisions still apply to this amended contract and all documentation in support of these requests should be maintained for future monitoring.

We appreciate your cooperation and assistance in this review process. Please do not hesitate to contact me at 803-734-0709 if I can be of further assistance.

Sincerely,

Lauren Wise

Lauren Wise
Compliance Specialist
Grants Administration

cc: Dirk Reis
Dale Culbreth
Finance

CDBG CONTRACT CHANGE ORDER TRANSMITTAL FORM – C2

Grantee:	<u>Oconee County</u>	Grant Number:	<u>4-W-07-005</u>
Contractor:	<u>Joy Construction Services</u>	Original Contract Amount: Includes Change Order #1	<u>\$602,971.09</u>
Type of Contract:	<u>Construction</u> 285 days	Change Order Amount:	<u>\$ 38,362.00</u>
Contract Period:	<u>(to May 14, 2010)</u>	New Contract Amount:	<u>\$641,333.09</u>
Grant Period:	<u>12/2007 – 6/2010</u>		
Change Order Description:	<u>The change order involves additional grading, removal of unsuitable soil, and hauling in of stone in order to provide a suitable base for paving.</u>		

Is there any change in location, scope, beneficiaries of funding sources?
 Yes (attach Project Amendment Request form) No

List contract funding sources and amounts. (Include CDBG and other sources.) Attach letters of funding commitment.
CDBG - \$641,333.09

ITEMS INCLUDED WITH THIS CONTRACT SUBMISSION

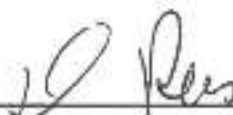
- | | |
|---|-----------|
| 1. Change Order and Justification | <u>X</u> |
| 2. Itemized Cost/Unit Pricing and Quantities (showing contractor name, contract period, & cost) | <u>X</u> |
| 3. Revised Plans and Specifications, if applicable. | <u>NA</u> |
| 4. Updated Section 102 Disclosure form, if contract amount changed (only for HUD grants received by the Grantee which exceed \$200,000) | <u>X</u> |
| 5. Cost/Price Analysis Establishing Cost Reasonableness and Approval by Engineer/Architect | <u>X</u> |

I hereby certify that the method change order to the above named contract is consistent with applicable requirements of the SC State CDBG Program Procurement Policies for open and free competition or with applicable provisions of local procurement procedures, whichever is the more stringent. Further, I certify that all items required for submission of a change order to Grants Administration are included in this transmittal, and that the contract document contains all applicable federal and state provisions. I understand that failure to include all applicable provisions may result in return of the change order and cause delay of change order approval.

Submitted By:

Dirk Reis

Typed Name of Grant Administrator



Signature

3/18/10

Date

Section 102 Disclosure Report

Applicant/Recipient Information:		Indicate whether this is an Initial Report <input type="checkbox"/> or an Update Report <input checked="" type="checkbox"/>	
1. Name, Address, and Phone: Oconee County, SC 415 South Pine Street Walhalla, SC 29691 864 638-4236		2. Employer ID Number: 57-6000391	
3. State CDBG Program Application Routing Number/Grant Number: 4-W-07-005		4. Amount of CDBG Assistance Requested/Received: \$986,364	
5. Name and location (street address, City and State) of the project or activity: QuickJobs Development Center			

Part I. Threshold Determinations

1. Is the amount in 4 (above) more than \$200,000?

Yes No

2. Have you received, or do you expect to receive any assistance from HUD in excess of \$200,000 during the fiscal year?

Yes No

If you answered "No" to both questions 1 and 2, **Stop!** You do not need to complete the remainder of this form. **However,** you must sign the certification at the end of the report.

Part II. Other Federal Government Assistance Provided or Requested/Expected Sources & Use of Funds

Such assistance includes, but is not limited to, any grant, loan, subsidy, guarantee, insurance, payment, credit or tax benefit.

Department/State/Local Agency Name and Address	Type of Assistance	Amount Requested/Provided	Expected Uses of the Funds
CDBG/SC Department of Commerce	Grant	\$986,364	Public Facilities and General Administration
Tri-County Technical College	Grant	\$98,636	Testing/Inspection Architectural Service General Administration
Tri-County Technical College	Grant	\$50,000	Furniture and Furnishings

(Note: Use additional pages if necessary)

Part III: Interested Parties You must disclose:

- All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
- Any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds \$50,000 or 10 percent of the assistance (whichever is lower).

Alphabetical list of all persons with a reportable financial interest in the project or activity (For individuals, give the last name first)	Social Security No. or Employer ID No.	Type of Participation in Project/Activity	Financial Interest in Project/Activity (\$ and %)
Appalachian Council of Governments	57-0513623	Administration	\$35,000 (3.2%)
Joy Construction Services	20-8157137	Construction	\$641,333.09 (59.1%)

(Note: Use additional pages if necessary)

Certification

Warning: If you knowingly make a false statement on this form, you may be subject to civil or criminal penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosures of information, including intentional non-disclosure, is subject to civil money penalty not to exceed \$10,000 for each violation. I certify that this information is true and complete.

Signature: 	Date: 3/18/10
--	---------------

mcmillan|pazdan|smith
architecture

March 11, 2010

Mr. Dirk Reis
Grant Services Director
Appalachian Council of Governments
P.O. Box 6668
Greenville, SC 29606

**RE: Tri County Technical College
Quick Jobs
Oconee County
McMillan Smith & Partners Project No. 07216**

Dear Mr. Reis:

Find enclosed one (1) copy each of *Construction Change Order No. 2* dated March 9, 2010 along with the general contractor's support data and Bunnell Lammons Engineering letter dated February 8, 2010 (with photographs). This change order is necessary due to unsuitable soil conditions in the parking lot and driveway area. Reference the Bunnell Lammons letter attached to this letter.

We have reviewed the pricing and it appears to be reasonable based upon the scope of work.

Sincerely,



Ed T. Reeves, Associate AIA, CSI
Director of Construction Services

Enclosures: As Noted Above

cc: Gable Stubbs - (w/Enclosures)
Ken Kopera - (w/Enclosures)

AIA[®] Document G701[™] – 2001

Change Order

PROJECT <i>(Name and address):</i>	CHANGE ORDER NUMBER: 002	OWNER: <input checked="" type="checkbox"/>
Oconee County/Tri County Technical College Quick Job Development Center Vocational Drive, Seneca, South Carolina	DATE: March 9, 2010	ARCHITECT: <input checked="" type="checkbox"/>
TO CONTRACTOR <i>(Name and address):</i>	ARCHITECT'S PROJECT NUMBER: 07216	CONTRACTOR: <input checked="" type="checkbox"/>
Joy Construction Services 131 Knox Road Seneca, SC 29672	CONTRACT DATE: July 14, 2009	FIELD: <input type="checkbox"/>
	CONTRACT FOR: General Construction	Gable Stubbs: <input checked="" type="checkbox"/>

THE CONTRACT IS CHANGED AS FOLLOWS:

(Include, where applicable, any undisputed amount attributable to previously executed Construction Change Directives)
Provide labor and material to remove unsuitable soils and replace with #3 rock in parking lot and drive.

The original Contract Sum was	\$ 504,504.00
The net change by previously authorized Change Orders	\$ 98,467.09
The Contract Sum prior to this Change Order was	\$ 602,971.09
The Contract Sum will be increased by this Change Order in the amount of	\$ 38,362.00
The new Contract Sum including this Change Order will be	\$ 641,333.09

The Contract Time will be unchanged by Zero (0) days.

The date of Substantial Completion as of the date of this Change Order therefore is May 14, 2010.

NOTE: This Change Order does not include changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

<u>McMillon Pazdan Smith Architecture</u>	<u>Joy Construction Services</u>	<u>Oconee County, South Carolina</u>
ARCHITECT <i>(Firm name)</i>	CONTRACTOR <i>(Firm name)</i>	OWNER <i>(Firm name)</i>
<u>200 East Broad St. Greenville, SC 29601</u>	<u>131 Knox Road, Seneca, SC 29672</u>	<u>415 South Pine Street, Walhalla, SC 29691</u>
ADDRESS	ADDRESS	ADDRESS
		
BY <i>(Signature)</i>	BY <i>(Signature)</i>	BY <i>(Signature)</i>
<u>Ed T. Reeves</u>	<u>Sid Ramepy</u>	<u>Robyn M. Courtright</u>
<i>(Typed name)</i>	<i>(Typed name)</i>	<i>(Typed name)</i>
<u>March 9, 2010</u>		
DATE	DATE	DATE

Joy Construction Services
 131 Knox Rd
 Seneca, SC 29672

Change Order

Date	Estimate #
3/9/2010	3

Name / Address
Oconee County/Tri-county Technical College Quick Job Development Center

			Project
Description	Qty	Rate	Total
This change order is for the parking lot area.		0.00	0.00
Swords Grading.		0.00	0.00
80 Loads hauled out 80@171.67		13,733.60	13,733.60
Swords Grading.		0.00	0.00
56 loads of stone hauled back in. 56@392.00		21,952.00	21,952.00
Job Supervision		2,676.40	2,676.40
Total			\$38,362.00

Phone #	Fax #	E-mail
864-888-8009	864-888-8109	s.rumpey@yahoo.com

BLE
BUNNELL-LAMMONS ENGINEERING, INC.
GEOTECHNICAL, ENVIRONMENTAL AND CONSTRUCTION MATERIALS CONSULTANTS

February 8, 2010

Caliber Engineering
Post Office Box 27171
Greenville, South Carolina 29616

Attention: Alan Johnson, P.E.

Subject: **Report of Site Observations**
Tri-County Technical College
Quick Jobs Building
Seneca, South Carolina
BLE Project Number J10-6567-02

Dear Mr. Johnson:

One of Bunnell-Lammons Engineering (BLE)'s representatives visited the Tri-County Technical College Quick Jobs Development Center project site located in Seneca, South Carolina. The purpose of our visit was to observe a proofroll of the subgrade soil in the parking lot and entrance drive.

The parking lot and entrance drive were proofrolled with a loaded, tandem-axle dump truck. Soft and wet soils were observed throughout the proofrolled area. In some areas, the dump truck created ruts as deep as the axles. It is our understanding that the site grading was completed several months ago and that the proposed pavement areas were subsequently severely rutted due to construction traffic. We also understand that the grading contractor then back dragged a dozer blade over the rutted areas to smooth out the area. Since grading was completed, the area has received above average precipitation and it was noted that several erosion areas had developed within the planned pavement areas.

The soft, wet, disturbed soils will have to be removed and replaced. The actual depth of the required overexcavation should be evaluated at the time the soil is removed. However, based on our site observations and our understanding of the previous site activities, we estimate that the soft wet soils extend to depths ranging from approximately one to at least three feet and will be variable across the site. Once the unsuitable soils are removed, the exposed subgrade should be proofrolled and the site grades re-established by placing engineered fill in accordance with the project specifications. Depending on the location/depth of existing utilities and other existing construction as well as the current weather patterns, it may not be possible to remove all of the soft wet soils without damaging the existing construction or subjecting the exposed subgrade to further deterioration due to precipitation. In lieu of complete overexcavation and replacement, the following option may be considered. However, at minimum, the area will have to be dry enough to support light weight tracked equipment to pursue the option below.

It may be possible to perform a partial overexcavation and incorporate a geogrid at the base of the overexcavation. If you elect to pursue this option, we recommend that the site be overexcavated a

minimum of two feet. The exposed soil subgrade should be covered with a biaxial or triaxial geogrid such as TENSAR® BX1100 (biaxial geogrid), TENSAR® TriAx (triaxial geogrid) or similar product. If possible, the geogrid should extend a minimum of 3-ft beyond the edge of the pavement. Joints in the geogrid should be overlapped a minimum of 12-inches. The geogrid should then be covered with a minimum 12-inch lift of stone (No. 2, No. 3, No. 4, No. 5 or No. 57) on the geogrid.

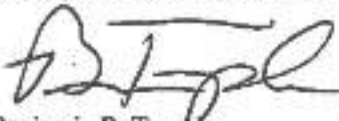
The initial lift of fill should be bladed onto the geogrid in such a manner that the fill rolls onto the geogrid ahead of the blade. Tracked vehicles should not operate on the geogrid until a minimum thickness of 12 inches of fill is in place. Rubber-tired equipment may operate directly on the geogrid provided they do not cause excessive rutting or otherwise damage the geogrid and provided they operate at low speeds without sharp turns or sudden braking.

Compaction on the initial lift should be limited to several passes of lightweight tracked equipment. In order for the geogrid to provide support for the fill soil it must be put into tension. The tension results from deflection of the geogrid due to movement of the underlying soils. As this movement occurs during compaction of the initial lift, it should be expected that there may continue to be some pumping or deflection of the underlying soils. Any low areas that develop as a result of the initial compaction should be filled with additional compacted stone. Repeat this process until minimal additional deflection is observed on the surface of the fill. At this point, the geogrid will provide adequate support for placement of subsequent lifts of compacted stone.


The upper one foot of replacement stone should consist of Macadam Base Course conforming to SCDOT Standard Specification, Section 305. The base course should be compacted to a minimum 98 percent of the standard Proctor (ASTM D-698) maximum dry density. Once the design subgrade elevation is re-established in this manner, the pavement section (aggregate and asphaltic concrete) should be constructed in accordance with the project plans and specifications.

If you have any questions concerning this report, or if we may be of further assistance to you, please do not hesitate to contact us.

Sincerely,
BUNNELL-LAMMONS ENGINEERING, INC.


Benjamin B. Temple
Staff Engineer




William A. Mathews, Registered Professional Engineer
Chief Engineer
Registered, S.C. #14039
BUNNELL-LAMMONS ENGINEERING, INC.
No. C01452
CERTIFICATE OF AUTHORIZATION

Attachments 1 Field Report dated February 4, 2010
 1 Proofrolling Worksheet dated February 4, 2010



02/03/2010



02:03:2010



02/03/2010



AGENDA ITEM SUMMARY
OCONEE COUNTY, SC

COUNCIL MEETING DATE: April 6, 2010
COUNCIL MEETING TIME: 7:00 PM

ITEM TITLE OR DESCRIPTION:

Award of contract for professional design services to Davis & Floyd, Inc. of Greenwood, SC, not to exceed \$124,699.00, to replace a deficient bridge at Cobb Bridge Road, TU-37, at the Chauga River crossing.

BACKGROUND OR HISTORY:

The bridge is a single lane bridge on a rural two lane road. The bridge decking has to be repaired on a regular basis. The bridge is weight restricted and therefore emergency response is hindered in this area. A recent traffic study showed that more than 200 vehicles cross this bridge every day. The proposed replacement is to a one span bridge using Weathering Steel Girder, 160 feet long and 31 feet wide, as was discussed during the March 17, 2010 Transportation Committee meeting. See **Attachment #1**.

SPECIAL CONSIDERATIONS OR CONCERNS:

Under the Request for Qualifications #06-17, Davis & Floyd, Inc., was accepted as qualified to provide Transportation Planning, Stormwater Management, Roadway and Bridge Design, and General Engineering Services. County Council approved a contract and fee schedule February 20, 2007 and this contract is in its third renewal period.

The scope of services provided by Davis & Floyd, Inc. shall consist of bridge design, retaining wall design, construction plans and specifications, high water elevation determination, Operation and Maintenance Manual, construction cost estimate, anticipated construction schedule, obtaining applicable permits, preparation of bid documents, evaluation of bids and recommendation of lowest responsible bidder. **Attachment 2** more clearly outlines the scope of work and related fees. Construction Management and Inspection of Construction are not included in the current scope of work.

COMPLETE THIS PORTION FOR ALL PROCUREMENT REQUESTS:

Does this request follow Procurement Ordinance #2001-15 guidelines? Yes

STAFF RECOMMENDATION:

Staff requests that County Council approve Davis and Floyd, Inc., to perform professional design services to design and bid the bridge replacement project, as defined by the attached Agreement for Professional Services, for a fee not to exceed \$124,699.

FINANCIAL IMPACT:

Bridge replacement is budgeted from line item **010-601-50882**.

ATTACHMENTS

1. Proposed Sketch Plan of Cobb Bridge.
2. Agreement for Professional Service to Design and Bid the replacement of Cobb Bridge at Chauga River.

Reviewed By/ Initials:

_____ County Attorney _____ Finance _____ Grants AC Procurement

Submitted or Prepared By:

Robyn Courtwright
Department Head/Elected Official

Approved for Submittal to Council:

J. E. Klugh
Gene Klugh, Interim County Administrator

Council has directed that they receive their agenda packages a week prior to each Council meeting, therefore, Agenda Items Summaries must be submitted to the Administrator for his review/approval no later than 12 days prior to each Council meeting. It is the Department Head / Elected Officials responsibility to ensure that all approvals are obtained prior to submission to the Administrator for inclusion on an agenda.

A calendar with due dates marked may be obtained from the Clerk to Council.



Engineering
Architecture
Environmental & Laboratory Services

Davis & Floyd, Inc. • PO Drawer 428 Greenwood, SC 29648 • 1319 Highway 72/221 E. Greenwood, SC 29649 • (864) 229-5211 (office) (864) 229-7844 (fax)

March 22, 2010

Oconee County, South Carolina
Procurement Office
415 South Pine Street
Walhalla, SC 29691

Attention: Mrs. Robyn M. Courtright

Reference: Agreement for Oconee County Bridge on Cabb Bridge Road over Chauga
River

Dear Mrs. Courtright:

Attached are two signed Agreements for the referenced project. Please sign both Agreements, keep one for your files and return one back to us.

If you have any questions please give me a call. We look forward to working with you on this project.

Thank you.

DAVIS & FLOYD, INC.

Andy Castro, P.E.
Associate

Enclosures (2)



Acceptance Copy

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement, made this 22nd day of March, 2010 is pursuant to the Agreement and Contract Between County of Oconee ("Client") and Davis & Floyd, Inc. ("D&F") dated 20th day of February 2007.

SERVICES. D&F agrees to provide those services set forth below, in connection with D&F's project ("the Project") described as follows:

Replacement of bridge, located on Cobb Bridge Road, spanning over Chauga River, in Oconee County South Carolina.

SCOPE OF WORK. D&F agrees to provide and Client authorizes D&F to provide the following services:

(See Attachment A - "Scope of Work")

COMPENSATION. Our compensation for the Professional Services delineated above will be based on an hourly rate as referenced in the Standard Personnel Rate Schedule, Attachment "C" of Contract. In addition, reimbursable expenses incurred in connection with the Project will be itemized and included in our monthly invoices. This might include such items as reproduction, travel and subsistence, long distance telephone calls, computer time, etc. The cost of these services shall not exceed \$ 124,699. Any changes to the scope of work which result in additional charges will be handled as change orders.

AGREEMENT VALIDITY. This Agreement is valid only if signed within forty-five calendar days of the date of this agreement as noted above unless officially extended by both parties.

Accepted By: _____

Date: _____ Name: _____

Title: _____

DAVIS & FLOYD, INC.

By: Jerry R. Linnard

Title: President & Chief Operating Officer

ATTACHMENT "A"

SCOPE OF WORK

The work to be performed by Davis & Floyd, Inc. will consist primarily of project management, bridge design, roadway design, production of final bridge construction plans with quantities and high water elevation, production of final roadway construction plans including right of way, production of Operation and Maintenance Manual, preparation of construction cost estimate and anticipated construction schedule, providing any special specifications not covered in the "South Carolina Department of Transportation Standard Specifications for Highway Construction, Edition 2007, property owner research (online search), preparing R/W Data Sheet and property strip map, providing pavement marking and signing plans, geotechnical engineering, providing traffic control plans/road closure plans, surveying, wetland delineation, provide lead paint report and asbestos report, obtaining applicable permits (Corps Permit, Navigable Waterway Permit, Land Disturbance Permit), preparation of bid documents, attending pre-bid conference, bid phase services, shop drawing review, and production of Record Drawings all in conjunction with County staff and consultants. Oconee County will be responsible for the following if required: Utility Coordination, right of way acquisition, review and approval of work and

documents prepared by Davis & Floyd, Inc., advertising the project, conducting the bid opening and awarding of the contract and any other necessary tasks not listed above.

This scope assumes a single span bridge approximately 160 feet long and 31'-3" wide, out-to-out. The members are anticipated to be weathering steel girders in two sections attached with a bolted field splice, on reinforced concrete End Bent Caps on piles or spread footings. An MSE wall is anticipated which will be designed by others. Davis & Floyd, Inc. shall design the bridge in accordance with the AASHTO Standard Specifications for Highway Bridges, Sixteenth Edition, 1996 and the SCDOT 2006 Bridge Design Manual. Live loading will be based on the AASHTO HS-25 truck loading. Davis & Floyd will utilize SCDOT Standard Drawings wherever feasible, and shall base the design on the 2007 Edition of the SCDOT Standard Specification for Highway Construction. All project documents shall be in Customary U.S. Units, except for soft metric reinforcement steel bars.

Colby Bridge Road in Ocassee County
 Bridge Replacement Project
 ENGINEERING MAN-HOURS

ATTACHMENT B

Task Description	Project Manager	Senior Engineer	Engineer P.E.	Designer/Assistant	Engineer Tech	Technical Operator	Surveyor/Contract
Subtotal Professional Time to County	0.3					3	
Final Construction Plans		0.5	4				
Final Construction Alignment		0.5	4				
Final Construction Stationing		0.5	30			2	
Develop summary of proposed activities, proposed items, marking items, etc.		0.5	4				
Prepare Final Construction Alignment Plans		24					
Develop Final Construction Stationing Plans							
Coordinate with County for Stationing							
Final Construction Plan Production, Printing, Copying, assemble submittals						18	
Final Construction							
TOTAL TASK 3	27	48.5	78.5	8	0	24	8
TASK 4 - HYDROLOGIC AND HYDROLOGIC DESIGN							
Final site Floodplain/Ordinary High Water		4					
Sectional & bridge Culvert Design		0.5	2				
A. Design waterway based on proposed section		0.5	2				
B. Final plan for waterway in cross-section including dual bridge		0.5	2				
C. Prepare section and provide cross-section							
TOTAL TASK 4	8	5.5	7	0	0	0	0
TASK 5 - PERMITS & INSTRUMENTAL							
A. RTDOS and Local Enclosure Permits (MOE to SOHOC)		48					
B. No Impact Letter for Bridge, Waterway Permit							
C. Design Report to SOHOC				10			
D. Local Permit and Instrumentation Survey				4			
E. Stationing Report		2					
F. Permit for waterway construction		2					
G. Permit for waterway construction		2					
H. Permit for waterway construction		2					
I. Coordinate with subcommittee (Tribunal)							
TOTAL TASK 5	21	48	0	20	10	24	8
TASK 6 - GEOTECH DESIGN							
A. Prepare Red Clay soils for soil and construction							
B. Copy & Mail Red Clay soils to SOHOC		8					
C. Coordinate with SOHOC on the site							
TOTAL TASK 6	20	8	0	0	0	0	0
TASK 7 - SECOND DRAINAGE							
As-built field notes			6				
Prepare as-built drawings			20				
Check drawings							
TOTAL TASK 7	8	0	26	44	0	0	8
TASK 8 - SHOP DRAWINGS AND TECHNICAL ASSISTANCE DURING CONSTRUCTION							
A. Shop drawing review		24	34				
B. Construction Review		48					
TOTAL TASK 8	48	24	34	0	0	0	0
TOTAL MAN HOURS (TASKS 1-8)	262	162	263.5	148	10	408	68

Engineering Services
Oconee County Bridge Replacement Project
Attachment C

2-Mar-10

TASK	Sr. PROJECT MANAGER		SENIOR ENGR		ENGINEER P.L.B.		DESIGNER SR. SCIENT		ENVIRON TECH		TECH OREN CHIEF		SURVEYER CLERICAL		TOTAL TASK MANHOURS	TOTAL LABOR
	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost		
TASK 1 PROJECT MANAGEMENT																
Hours	48		12		0		0		0		0		12		72	
Cost	\$ 6,300.00	\$ 1,260.00	\$ 1,260.00		\$ -		\$ -		\$ -		\$ -		\$ 600.00			\$ 8,160.00
TASK 2 SURVEYING																
Hours	0		0		28		0		0		48		30		98	
Cost	\$ -	\$ -	\$ -	\$ 2,000.00	\$ -	\$ -	\$ -	\$ 1,600.00	\$ -	\$ 1,960.00	\$ -	\$ -	\$ 1,960.00			\$ 7,210.00
TASK 3 BRIDGE DESIGN																
Hours	72		28		56		56		0		0		2		278	
Cost	\$ 5,300.00	\$ 2,700.00	\$ 2,700.00	\$ 6,000.00	\$ 6,200.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 100.00			\$ 27,500.00
TASK 4 ROADWAY DESIGN																
Hours	27		46.5		70.5		0		0		64		0		108	
Cost	\$ 2,210.00	\$ 4,262.50	\$ 4,262.50	\$ 7,257.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,880.00	\$ -	\$ -			\$ 17,650.00
TASK 5 HYDRAULIC AND HYDROLOGIC DESIGN																
Hours	0		5.5		7		0		0		0		0		12.5	
Cost	\$ -	\$ 577.50	\$ 577.50	\$ 655.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			\$ 1,242.50
TASK 6 PERMITS & ENVIRONMENTAL																
Hours	37		46		0		20		40		24		0		137	
Cost	\$ 4,230.00	\$ 4,230.00	\$ -	\$ -	\$ 1,650.00	\$ -	\$ 1,650.00	\$ -	\$ 250.00	\$ -	\$ 250.00	\$ -	\$ -			\$ 12,670.00
TASK 7 BIDDING SERVICES																
Hours	20		0		0		0		0		0		4		32	
Cost	\$ 2,880.00	\$ 340.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 200.00			\$ 3,440.00
TASK 8 RECORD DRAWINGS																
Hours	6		0		14		44		0		0		0		64	
Cost	\$ 765.00	\$ -	\$ -	\$ 1,320.00	\$ 2,520.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			\$ 5,605.00
TASK 9 SHOP DRAWING REVIEW AND TECHNICAL ASSISTANCE DURING CONSTRUCTION																
Hours	48		24		24		0		0		0		0		96	
Cost	\$ 6,240.00	\$ 2,520.00	\$ 2,520.00	\$ 2,520.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			\$ 11,640.00
TOTAL	207		182		243.5		148		10		96		48		871.5	
Total Cost	\$ 37,965.00	\$ 17,010.00	\$ 17,010.00	\$ 23,127.50	\$ 11,940.00	\$ 850.00	\$ 7,000.00	\$ 2,667.00	\$ -	\$ -	\$ -	\$ -	\$ -			\$ 65,662.00

Attachment D

Cobb Bridge Road - Oconee County Bridge Replacement Project

Direct Expenses

ITEM	\$	UNIT	OCONEE COUNTY BRIDGE		TOTAL
			#	\$	\$
COMPUTER					
Microstation	\$ 5.00	per hour		\$ -	\$ -
Subtotal					\$ -
TRANSPORTATION					
Per Diem	\$ 70.00	per day	12	\$ 840.00	\$ 840.00
Rental Car	\$ 50.00	per day		\$ -	\$ -
Leased Car	\$ 600.00	month		\$ -	\$ -
Mileage	\$ 0.55	per mile	2500	\$ 1,375.00	\$ 1,375.00
Subtotal					\$ 2,215.00
COMMUNICATIONS					
Telephone	\$ 3.00	per call	150	\$ 450.00	\$ 450.00
Postage	\$ 5.00	per package	10	\$ 50.00	\$ 50.00
Cell Phone	\$ 75.00	\$ 25.00	0	\$ -	\$ -
Overnight Delivery	\$ 20.00	per package	10	\$ 200.00	\$ 200.00
Facsimile Transmissions	\$ 1.10	per page	0	\$ -	\$ -
Subtotal					\$ 700.00
PRODUCTION					
Blackline Prints	\$ 1.00	per print	975	\$ 975.00	\$ 975.00
Mylar's	\$ 25.00	per mylar		\$ -	\$ -
Color Plotting	\$ 6.00	per foot	0	\$ -	\$ -
Photocopy (B&W)	\$ 0.15	per page	750	\$ 112.50	\$ 112.50
Photocopy (color)	\$ 0.50	per page	0	\$ -	\$ -
Photographs	\$ 25.00	per roll	0	\$ -	\$ -
Subtotal					\$ 1,087.50
PERMITS & ENVIRONMENTAL					
Lead Gun	\$ 300.00	per day	0.5	\$ 150.00	\$ 150.00
Lab work for asbestos survey	\$ 25.00	ea. sample	15	\$ 375.00	\$ 375.00
TOTAL					\$ 4,527.50

3/2/2010

**BRIDGE REPLACEMENT PROJECT
OCONEE COUNTY, SC**

ATTACHMENT E

FEE SUMMARY

DAVIS & FLOYD, INC.

Direct Payroll Cost

	HOURS	RATE	TOTAL
Senior Project Manager	252.00	\$130.00	\$ 32,760.00
Senior Engineer	162.00	\$105.00	\$ 17,010.00
Engineer/PLS	243.50	\$95.00	\$ 23,132.50
Designer/Senior Scientist	148.00	\$80.00	\$ 11,840.00
Environmental Technician	10.00	\$65.00	\$ 650.00
Technician/Survey Crew Chief	108.00	\$65.00	\$ 7,020.00
Surveyor & Clerical	48.00	\$50.00	\$ 2,400.00
Total Direct Payroll Cost =			\$ 94,812.50
			\$ -
Subtotal			\$ 94,812.50

Direct Costs = \$ 4,527.50

DAVIS & FLOYD, INC. TOTAL = \$ 99,340.00

TOTAL COST (LABOR, OVERHEAD, FEE, DIRECT, SUBS) \$ 99,340.00

CONTINGENCY (10% OF TOTAL COSTS) \$ 9,934.00

SUBCONSULTANTS

Tidewater	\$2,000.00
S&ME (traffic control during boring not included)	\$8,425.00
QA/QC	\$5,000.00

MAXIMUM TOTAL FEE (COST PLUS NOT TO EXCEED) = \$ 124,699.00

AGENDA ITEM SUMMARY
OCONEE COUNTY, SC

COUNCIL MEETING DATE: Tuesday, April 13, 2010
COUNCIL MEETING TIME: 7:00 PM

ITEM TITLE OR DESCRIPTION:

Award Bid #09-19, Three Phase Natural Gas Generator for Oconee County Public Works Facility to Essential Power, LLC, Highlands, NC in the amount of \$32,395.36.

BACKGROUND OR HISTORY:

The Public Works Department functions as an "Essential Facility." Public Works activities are required when other agencies and departments are closed due to inclement weather. The Public Works Facility must be capable of operating during emergencies and/or during power outages. This generator will provide power to operate the required systems needed for office operation such as, but not limited to the phone system, computer network system and radio system during power outages. This generator will also supply power to run air compressors, power tools and any other electrical equipment required for operator maintenance during power outages.

On March 25, 2010, formal sealed bids were opened for a 70Kw Liquid Cooled Natural Gas Engine stand-by Generator with three phase automatic transfer switch and extreme cold weather kit which would automatically start during power outages at the Public Works Facility. Bid submittals included equipment, installation and set-up to provide a fully functioning three phase natural gas generator. Eight companies were originally notified of this bid opportunity. Four companies submitted bids, with Essential Power, LLC, of Highlands, NC submitting the lowest bid of \$32,395.36.

SPECIAL CONSIDERATIONS OR CONCERNS:

COMPLETE THIS PORTION FOR ALL PROCUREMENT REQUESTS:

Does this request follow Procurement Ordinance #2001-15 guidelines? Yes

STAFF RECOMMENDATION:

Award Bid #09-19, Three Phase Natural Gas Generator for Oconee County Public Works Facility to Essential Power, LLC, Highlands, NC in the amount of \$32,395.36.

FINANCIAL IMPACT:

For FY 2009-10, County Council approved \$35,300.00 (budget code 010-601-50840-00000) for the purchase of a generator to operate the Public Works Facility when the power goes out.

ATTACHMENTS

1. Bid Tabulation

Reviewed By/ Initials:

_____ County Attorney _____ Finance N/A Grants PC Procurement

Submitted or Prepared By:

Robert M. Courtright
Department Head/Elected Official

Approved for Submittal to Council:

Gene Klugh
Gene Klugh, Interim County Administrator

Council has directed that they receive their agenda packages a week prior to each Council meeting, therefore, Agenda Items Summaries must be submitted to the Administrator for his review/approval no later than 12 days prior to each Council meeting. It is the Department Head / Elected Officials responsibility to ensure that all approvals are obtained prior to submission to the Administrator for inclusion on an agenda.

A calendar with due dates marked may be obtained from the Clerk to Council.

Approved Budget Ordinance amount for bid item \$
Budget Code

I hereby certify that to the best of my knowledge
this tabulation of bids is correct

Robert Courtney
Procurement Director

Bidders	Allan Dearth & Sons	Blue Ridge Electric	Dennis Electric	Essential Power Systems
Address	Scaly Mtn, NC	Anderson, SC	Blythewood, SC	Highlands, NC
Warranty	2 year	\$895 - 5-year extended	Standard limited warranty	2 year
Delivery & Completed Installation Time	30 days	40 days	45-90 days	30 days
Addendum 1	yes	yes	yes	yes
Generator	\$ 17,199.00	\$ 18,363.53	\$ 19,440.00	\$ 17,446.00
Automatic Transfer Switch	\$ 2,813.00	\$ 3,155.29	\$ 4,104.00	\$ 3,060.00
Cold Weather Kit	\$ 145.00	\$ 127.00	\$ 405.00	\$ 150.00
Base Bid	\$ 20,157.00	\$ 28,623.00	\$ 23,949.00	\$ 20,656.00
Installation	\$ 11,750.00	\$ 7,800.00	\$ 16,000.00	\$ 10,500.00
Sales Tax	\$ 1,209.42	\$ 1,717.38	\$ 1,436.94	\$ 1,239.36
Grand Total	\$ 33,116.42	\$ 38,140.38	\$ 41,385.94	\$ 32,395.36

AGENDA ITEM SUMMARY

OCONEE COUNTY, SC

COUNCIL MEETING DATE: April 13, 2010

COUNCIL MEETING TIME: 6:00 PM

ITEM TITLE OR DESCRIPTION:

Oconee County Medical Plan Renewal

BACKGROUND OR HISTORY:

Oconee County operates a self-funded medical plan for employees and retirees. The Plan year runs from May 1st thru April 30th. The renewal is scheduled for May 1 in order to have the medical plan funding estimate before the budget process is completed. Renewals are addressed at this time of year so that claims information through February can be used to estimate the renewal costs of the Stop-Loss portion of the medical plan. The Stop-Loss is in effect insurance the County purchases to reimburse the County for any individual's claims that exceed a \$75,000 dollar amount during the year. Each year, quotes are obtained from several insurance companies to ensure that the County receives the best available price for this coverage which requires up to date information on specific claims. Estimates of claims for the year are based on prior experience and plan design, including wellness initiatives.

SPECIAL CONSIDERATIONS OR CONCERNS:

The largest cost of the Health Benefit is for the Medical Claims, which vary significantly from year to year. The current plan year from May 1, 2009 to February 28, 2010 has seen a decrease in the amount of claims. We believe this is due to normal fluctuations in claims, the effect of wellness measures over the past several years and the economy which has resulted in people delaying or eliminating medical care. Please see attached sheet for a comparison of annual costs.

The new health care legislation will have an impact on our costs in the future; however we have been unable to quantify that effect at this time. The regulations are still being written, but we believe that the requirement to provide coverage for dependents under the age of 26 will not take effect until the plan year beginning May 1, 2011.

The County would like to implement a Nurse Practitioner program. This would provide a valuable benefit to the County employees while reducing medical claims and time away from the job for office visits. These programs have been proven to be a cost effective means of reducing expense and promoting a culture of wellness. The cost of this program (\$27,000) is included in the estimated cost for 2010-2011. Please see the attached information on the proposed program.

Eligibility for county health care benefits for retirees does not end when the retiree becomes eligible for Medicare. This significantly lengthens the time the County is responsible for paying health benefits for retirees. Medicare becomes primary, but the county continues to maintain the retiree as secondary coverage. In order to help manage the retiree health cost, we believe that we should change this policy for employees hired after July 1, 2010 so that County retiree health care ends when the retiree is eligible for Medicare.

COMPLETE THIS PORTION FOR ALL PROCUREMENT REQUESTS: Yes

Does this request follow Procurement Ordinance #2001-15 guidelines? Yes / No [review #2001-15 on Procurement's website]

If no, explain briefly:

Council has directed that they receive their agenda packages a week prior to each Council meeting, therefore, Agenda Items Summaries must be submitted to the Administrator for his review/approval no later than 12 days prior to each Council meeting. It is the Department Head / Elected Officials responsibility to ensure that all approvals are obtained prior to submission to the Administrator for inclusion on an agenda.

A calendar with due dates marked may be obtained from the Clerk to Council.

**OCONEE COUNTY
EMPLOYEE HEALTH PLAN**

Plan Amendment # 6

This amendment is effective 7/1/2010.

For employees hired on or after 7/1/2010, and who qualify for retiree benefits under the eligibility provisions of this Plan, retiree coverage will cease as of age 65 or entitlement to Medicare, whichever occurs first.

In the event a spouse is also covered at the time retiree coverage for the employee is lost, but has not yet attained age 65 or who does not have Medicare, such spouse may continue to be covered until one of these conditions has been met.

All other Plan provisions will remain unchanged.

Date _____ Signed _____

Title _____

5/1/2010

(Based on Distribution Below)
Projected Monthly Cost

	Single	Family	Monthly	Single	Family	Monthly	Single	Family	Monthly	Single	Family	Monthly	Single	Family	Monthly
Single	13.50	13.50	5,805.00	13.50	13.50	5,805.00	13.50	13.50	5,805.00	13.50	13.50	5,805.00	13.50	13.50	5,805.00
Family	54.94	149.37	47,680.82	70.64	198.95	51,039.74	68.95	155.93	52,347.82	68.95	155.93	52,347.82	68.95	155.93	52,347.82
Specific Deductible	4.55	4.55	1,930.80	4.42	4.42	1,800.60	4.42	4.42	1,800.60	5.01	5.01	2,154.33	5.01	5.01	2,154.33
Specific Contract															
Specific Run-In Limit															
Aggregate Contract															
Aggregate Run-In Limit															
Quota Accepted (based on 2009)															
Current American National			75,000			75,000			75,000			75,000			75,000
Renewal American National			75,000			75,000			75,000			75,000			75,000
Option 1 Federal Insurance			75,000			75,000			75,000			75,000			75,000
Claims & Administrative Fee															
Specific Stop Loss Premium															
Aggregate Stop Loss Premium															
Aggregate Accommodation															
Utilization Review - MedWatch															
PPO Network - Cap Based															
Broker Fee															
Prescription Card Admin.															
HIPAA Administration															
COBRA Administration															
Termin's Liability															
Monthly Billed Fixed Cost	91.70	175.13	59,187.52	97.26	185.57	62,486.34	96.16	183.14	64,042.12	96.16	183.14	64,042.12	96.16	183.14	64,042.12
*Health Claims Funding	648.58	1,234.32	396,354.52	530.89	1,194.49	363,565.10	681.81	1,318.35	416,648.66	Not Included	Not Included	Not Included	Not Included	Not Included	Not Included
*Dental Claims Funding															
*Prescription Card Funding															
*Weekly Disability Funding															
*Vision Funding															
*Recommended Total Funding Level	840.29	1,410.45	455,542.14	828.15	1,380.06	446,051.44	847.97	1,511.49	480,690.78	847.97	1,511.49	480,690.78	847.97	1,511.49	480,690.78
Document Fee (1)	\$	\$	+ Printing	\$	\$	+ Printing	\$	\$	+ Printing	\$	\$	+ Printing	\$	\$	+ Printing
Annual Administration Fee (2)	\$	\$		\$	\$		\$	\$		\$	\$		\$	\$	
*Total Fixed Cost (3)	\$	\$	710,751.44	\$	\$	749,835.08	\$	\$	749,835.08	\$	\$	768,505.44	\$	\$	768,505.44
*Estimated Attachment Point (4)	\$	\$	4,766,254.24	\$	\$	4,632,781.20	\$	\$	4,632,781.20	\$	\$	4,998,783.92	\$	\$	4,998,783.92
*Maximum Cost (1+2+3+4)	\$	\$	5,466,505.68	\$	\$	5,352,617.28	\$	\$	5,352,617.28	\$	\$	5,738,289.36	\$	\$	5,738,289.36
Processed Funding at 90%	\$	\$	4,280,528.92	\$	\$	4,142,503.08	\$	\$	4,142,503.08	\$	\$	4,495,805.53	\$	\$	4,495,805.53
Total Proposed Funding Plus Fixed	\$	\$	4,690,860.26	\$	\$	4,852,339.15	\$	\$	4,852,339.15	\$	\$	5,238,312.97	\$	\$	5,238,312.97
Proposed Funding at 95%	\$	\$	4,518,441.93	\$	\$	4,372,942.14	\$	\$	4,372,942.14	\$	\$	4,745,794.72	\$	\$	4,745,794.72
Total Proposed Funding Plus Fixed	\$	\$	5,228,592.57	\$	\$	5,122,478.22	\$	\$	5,122,478.22	\$	\$	5,518,300.16	\$	\$	5,518,300.16

Signature to Accept Quote:

(Based on Distribution Below)
Projected Monthly Cost

	Option 2 StarNet 75,000 24-12 N/A 789,394	Option 3 Companion 75,000 24-12 N/A 712,500	Option 4 American National 75,000 24-12 N/A 731,871
	Monthly	Monthly	Monthly
	Single	Family	Single
Single	13.50	13.50	13.50
Family	155.88	154.62	153.85
Specific Deductible	6.09	4.52	2.88
Specific Contract			
Specific Run-In Limit			
Aggregate Contract			
Aggregate Run-In Limit			
Quote Accepted (case by case)			
Claims & Administrative Fee	13.50	13.50	13.50
Specific Stop Loss Premium	67.78	154.62	153.85
Aggregate Stop Loss Premium	4.08	4.52	2.88
Aggregate Accumulation			
Utilization Review - Out of Area	1.70	1.70	1.70
PHO Network - Out of Area	6.00	8.00	6.00
Broker Fee			
Prescription Card Admin.			
HIPAA Administration			
COBRA Administration	1.00	1.00	1.00
Terminal Liability			
Monthly Billed Fixed Cost	93.47	181.34	178.71
*Health Claims Funding	545.40	1,254.98	1,234.75
*Dental Claims Funding		Not Included	Not Included
*Prescription Card Funding		Included	Included
*Weekly Disability Funding		Not Included	Not Included
*Violation Funding			
*Recommended Total Funding Level	538.87	1,436.32	1,413.46
Document Fee (1)	\$	\$	\$
Annual Administration Fee (2)	\$	\$	\$
Total Fixed Cost (3)	\$ 759,454.80	\$ 723,117.12	\$ 751,811.78
*Estimate Attachment Point (4)	\$ 4,908,874.40	\$ 4,745,963.84	\$ 4,608,303.36
*Maximum Cost (1+2+3+4)	\$ 5,668,329.20	\$ 5,473,080.96	\$ 5,360,721.12
Proposed Funding at 91%	\$ 4,418,836.96	\$ 4,274,967.46	\$ 4,146,016.42
Total Proposed Funding Plus Fixed	\$ 5,178,341.76	\$ 4,998,084.56	\$ 4,889,830.18
Proposed Funding at 95%	\$ 4,684,390.68	\$ 4,512,465.85	\$ 4,376,453.83
Total Proposed Funding Plus Fixed	\$ 5,423,835.48	\$ 5,235,582.77	\$ 5,130,275.65

Signature to Accept Quote:

5/1/2010
(Based on Distribution Below)
Projected Monthly Cost

	Single	Family	Option 5 Event Re	Option 6 Plenco
Single	196		75,000	75,000
Family	234		24-12	24-12
Specific Deductible			N/A	N/A
Specific Contract			24-12	24-12
Specific Run-In Limit			713,434	No \$ Limit
Aggregate Contract			Monthly	Monthly
Aggregate Run-In Limit				
Quote Accepted (Check box for Yes)				
Claims & Administrative Fee	13.50	13.50	5,835.00	5,805.00
Specific Stop Loss Premium	76.09	180.49	58,052.30	66,725.96
Aggregate Stop Loss Premium	4.50	4.50	1,935.00	2,399.40
Aggregate Reconciliation				
Utilization Review - Member	1.70	1.70	731.00	731.00
PPO Network - Copay	6.00	6.00	2,580.00	2,560.00
Broker Fee				
Prescription Card Admin.				
HIPAA Administration				
COBRA Administration	1.00	1.00	430.00	430.00
Terminal Liability				
Monthly Billed Fixed Cost	102.79	213.19	70,033.30	78,671.36
*Health Claims Funding	527.40	1,252.06	396,352.44	394,269.50
*Dental Claims Funding		Not Included		Not Included
*Prescription Card Funding		Included		Included
*Windy Disability Funding		Not Included		Not Included
*Vision Funding				
*Recommended Total Funding Level	630.19	1,465.25	466,385.74	472,930.86
Document Fee (1)	\$	\$	+ Printing	- Printing
Annual Administration Fee (2)	\$	\$		
*Total Fixed Cost (3)	\$ 840,399.60	\$ 840,399.60	1.16	1.33
*Estimated Attachment Point (4)	\$ 4,756,226.28	\$ 4,756,226.28	1.00	0.99
*Maximum Cost (1+2+3+4)	\$ 5,596,625.88	\$ 5,596,625.88	1.02	1.04
Proposed Funding at 90%	\$ 4,280,628.35	\$ 4,280,628.35		
Total Proposed Funding Plus Fixed	\$ 5,121,025.95	\$ 5,121,025.95		
Proposed Funding at 95%	\$ 4,518,417.62	\$ 4,518,417.62		
Total Proposed Funding Plus Fixed	\$ 5,359,817.42	\$ 5,359,817.42		

Signature to Accept Quote:

Summary of Nurse Practitioner Program

The County proposes contracting with Oconee Medical Center to provide a Nurse Practitioner for (2) half days each week. The County would provide an office at the Pine Street building for the program and OMC would provide the equipment and supplies. Nurse Practitioner programs have become very popular as a way to control health care costs and promote wellness. This program could benefit the County in many areas:

1. Savings on Claims – At a cost of the of \$70.00 per hour (all inclusive) that is approximately equal to one (1) claim on our medical plan.
2. Follow up incentives for our Wellness Plan, for additional cost savings to our self-insured medical plan.
3. Less time away from work for employees, for doctor's appointment.
4. Savings to the employees and dependants on our health plan, they will not be charged a co-pay for the visit.

Currently there are several industries participating in this program in Oconee County, one of which has reported a 75% utilization form their employees. This is proven to be a great saving to the company medical plan and employees. We propose to offer this program to all active County employees, all County retirees covered under our plan and all dependents who are covered by the County Health Plan. All health information would be maintained by the nurse and would remain confidential.

As you see, in the agreement there are other potential areas of savings for Oconee County in implementing the Nurse program. Oconee will be getting a utilization monthly report to monitor and evaluate the effectiveness of the program.



Wellness Center

Business & Group Health Services

298 Memorial Drive
Seneca, SC 29672
Phone (864) 885-7654
Fax (864) 885-7571
w.oconeehospital.org

INDUSTRIAL HEALTH MID-LEVEL NURSE PRACTITIONER SERVICE AGREEMENT

This agreement is made and entered into as of _____ by and between **Oconee Medical Center** hereinafter designated "OMC" and Oconee County hereinafter designated "Company".

WHEREAS, OMC has developed and offers, through its Business and Group Health / Wellness Department, certain medical, health education and wellness services to corporations; and

WHEREAS, Company desires to engage OMC to provide certain services as further described in this Agreement to its employees located in Walhalla, South Carolina; and

WHEREAS, Company wishes to have an advance practice registered nurse practitioner (the "Industrial Health Nurse Practitioner") in attendance for the purpose of rendering such services;

WITNESSETH, that for and in consideration of the mutual promises contained herein, it is understood and agreed as follows:

- I. **Services:** OMC shall be responsible for delivering the following services (the "Services"):
 - A. OMC's Business and Group Health / Wellness Department, through the Industrial Health Nurse Practitioner and other personnel assigned by OMC shall assist the Company to provide the following occupational health medical components and programs for its employees:
 - i. A program to promote optimum employee health and prevent illness and injury;
 - ii. The services of the Industrial Health Nurse Practitioner to provide primary and preventative healthcare services under the direction of a physician preceptor for Company's employees and their immediate family members (not to include services related to Newborn care and Well Child Physical Assessments). Services will include:
 - (a) The assessment, evaluation and treatment of acute episodic illnesses and/or injuries (such as sinus infection, sore throat, bronchitis, headache, sprains, strains, etc.);
 - (b) Disease management to improve overall health and to encourage the development of an external relationship with a primary care physician for the management of chronic diseases (such as, hypertension, diabetes, COPD, arthritis, etc.);
 - (c) Employment physical assessments;
 - (d) Hazwopper Physicals; and
 - (e) DOT Physicals.
 - iii. An assessment of the needs of the Company's employee population along with the work site to plan, implement and evaluate occupational health programs designed to address these needs.
 - iv. Upon request of the Company and under a separate Service Agreement, the Industrial Health Nurse Practitioner and other personnel assigned by OMC Director of Wellness can provide additional occupational health medical components and programs such as:
 - Toxicology screenings,
 - Influenza Vaccine

- Hepatitis B Vaccine
- Drug testing
- Health Risk Appraisals with follow-up interventions

2. Responsibilities of OMC:

A. OMC shall be the employer of the Industrial Health Nurse Practitioner, who it shall appoint to coordinate and provide the Services at Company. OMC shall be responsible for administrative and professional supervision of the Industrial Health Nurse Practitioner. The OMC Industrial Health Service Coordinator or designee will have administrative responsibility for the implementation of the Company's Program. While performing the Services, the Industrial Health Nurse Practitioner will coordinate with a Company Designee (as defined herein).

B. OMC shall be responsible for medical direction and oversight of the Services, which will include the provision of a physician preceptor for the Industrial Health Nurse Practitioner, who will be available for consultation and supervision in accordance with licensing standards, provide support in developing policies and procedures to guide delivery of health care services, and review and sign the Industrial Health Nurse Practitioner's clinical protocols and directives at least annually.

C. All OMC personnel providing Services hereunder shall at all times be considered employees of OMC, and shall be covered by OMC's professional liability coverage. OMC shall be responsible and agrees to pay all compensation and related federal, state, and local taxes along with all employer contributions imposed or required under unemployment insurance, social security, disability benefits, worker's compensation and income tax laws for its employees.

D. OMC shall provide such furnishings; equipment and supplies as the Industrial Health Nurse Practitioner and the Company Designee mutually agree are needed to effectuate the Program.

E. Industrial Health Nurse Practitioner shall be available on-site at the Company's designated location, 4 hours per day, 2 days per week, pursuant to the following schedule:

- Mondays, 8:30 AM – 12:30 PM
- Thursdays 8:30 AM – 12:30 PM

Extended hours or reduction of hours will be based on the availability of the Industrial Health Nurse Practitioner, the needs of the Company, and special time constraints such as holidays. The Company's Designee and the OMC Director of Wellness will work together to determine the specific work hours of the Industrial Health Nurse Practitioner.


3. Responsibilities of Company:

- A. Company shall retain sole and exclusive responsibility and liability for compliance with any and all federal, state or local laws, rules, regulations, and ordinances related to workplace safety, employee health and safety, workers' compensation and the like.
- B. Company shall designate an individual who shall be administratively responsible for the Program within the Company (the "Company Designee").
- C. Company shall provide a safe environment and adequate clinical space for the Industrial Health Nurse Practitioner to provide Services under this Agreement. To protect confidential patient information, the clinic area must be secured with lock and key access. The Industrial

Health Nurse Practitioner and Company Designee will have access keys. The Company shall permit the Industrial Health Nurse Practitioner to have access to the common areas of its facility, including parking areas, break rooms and restrooms.

- D. Company shall maintain appropriate comprehensive general liability insurance, workers' compensation insurance and other coverage deemed necessary by Company to adequately insure against liability or loss arising from its corporate operations, including but not limited to the operation of the Program.
 - E. Company shall pay to Oconee for the Services the sum of \$28,000 per year payable monthly in equal installments of \$2333 (calculated from \$70 per hour x 8 hours/week fee for 50 weeks per year). All fees shall be paid in advance, on or before the tenth (10th) calendar day of the month, prorated for any partial month of service.
 - F. Company shall provide the internal and external publicity and communications appropriate to maintain the Program. OMC may provide recommendations as to such publicity and communications.
4. **Privacy of Health Information.** The parties acknowledge that certain personal health information created, used or obtained in the performance of Services under this Agreement may be subject to applicable provisions of the Health Insurance Portability and Accountability Act of 1996 (P.L. 104 – 191) ("HIPAA"). OMC and the Company will work cooperatively to assure Program compliance with applicable HIPAA rules and regulations and to that end will implement HIPAA compliant forms, policies and procedures for the Company's Program. Company acknowledges that the Industrial Health Nurse Practitioner shall comply with all other state and federal laws concerning patient confidentiality. Such compliance may require an authorization signed by the patient prior to the release of any medical information to any party, including Company Designee.
5. **Restrictive Covenant.** Company acknowledges that OMC has expended considerable time, effort and expense in the development of its Industrial Health Services Department and personnel, and to that end, Company agrees that during the term of this Agreement, OMC shall be the exclusive provider of the Services for the Company. Moreover, during the term of this Agreement and for a period of twelve (12) months thereafter, the Company shall not seek to hire, consult with or otherwise employ or contract with any individual who has served as the Company's Industrial Health Nurse during the term of this Agreement.
6. **Term and Termination.** The term of this Agreement shall be for a period of one (1) year from the date hereof, and shall renew automatically for additional one (1) year terms unless sooner terminated as provided herein. Notwithstanding the foregoing or any other provision of this Agreement to the contrary, either party may terminate this Agreement for any reason, with or without cause, by giving thirty (30) days advance written notice to the other party at either address shown below.
7. **Miscellaneous.** This Agreement sets forth the parties' entire understanding with regard to the provision of Services, and supercedes any and all other written or oral agreements made by the parties as to the subject matter hereof. Any amendment to this Agreement must be made in writing, and signed by both parties to be effective. Any disputes concerning this agreement or the construction thereof shall be settled by construction of South Carolina law, and by a mediator mutually selected by the parties who will hear the dispute in Oconee County, South Carolina or by petition to the Oconee County Circuit Court should the parties be unable to mediate their dispute.

Oconee Medical Center, Incorporated
298 Memorial Drive
Seneca, SC 29672



Jeanne L. Ward, President/CEO

Date: 2/9/10

Oconee County Official
415 South Pine Street
Walhalla, SC 29691

Oconee County Official

Date: _____

**AGENDA ITEM SUMMARY
OCONEE COUNTY, SC**

**COUNCIL MEETING DATE: April 13, 2010
COUNCIL MEETING TIME: 6:00 PM**

ITEM TITLE OR DESCRIPTION:

Request from the City of Seneca

BACKGROUND OR HISTORY:

The Assessed Value of property in the Seneca Rural District 7 decreased approximately \$4.8 million dollars from last year. The calculated payment due under the fire contract is less than was budgeted last spring. The County has researched this decrease in detail and believes the decrease is related to industrial closings, large increases in other fire districts and correction of the Seneca Rural fire district boundary. The largest factor in the decrease of assessed value is related to the correction of the fire district boundary for the Seneca Rural Fire district. In 2007 the County incorrectly entered some fire district boundaries into the property records. These boundaries were corrected in 2009, but not until the fall of the year after the budget was completed. For the 2009-2010 budget and the 2008-2009 payment, the QSI system estimates were used, as the values were not available from the Manatron system at that time. These calculations were based on incorrect assessed value within the fire district.

SPECIAL CONSIDERATIONS OR CONCERNS:

The City of Seneca budgeted revenue of \$503,000 for the 2009-2010 fiscal year based on estimates provided by the County. The unexpected decrease in assessed value has reduced the payment under the terms of the contract. Seneca has requested that the County fund the difference of the budgeted payment and the actual payment that was made based on the terms of the contract.

COMPLETE THIS PORTION FOR ALL PROCUREMENT REQUESTS: Yes

Does this request follow Procurement Ordinance #2001-15 guidelines? Yes / No [review #2001-15 on Procurement's website]
If no, explain briefly:

STAFF RECOMMENDATION:

Due to the critical nature of the services provided and the error on the County's part, staff recommends payment of an additional \$48,321.46 to the City of Seneca.

FINANCIAL IMPACT:

This is within the amount budgeted for the contract with Seneca.

COMPLETE THIS PORTION FOR ALL GRANT REQUESTS:

Are Matching Funds Available: Yes / No
If yes, who is matching and how much:

ATTACHMENTS

Letter from the City of Seneca

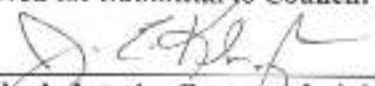
Reviewed By/ Initials:

_____ County Attorney _____ Finance _____ Grants _____ Procurement

Submitted or Prepared By:

_____ Kendra Brown _____
Department Head/Elected Official

Approved for Submittal to Council:



J.E. Klugh, Interim County Administrator

Council has directed that they receive their agenda packages a week prior to each Council meeting, therefore, Agenda Items Summaries must be submitted to the Administrator for his review/approval no later than 12 days prior to each Council meeting. It is the Department Head / Elected Officials responsibility to ensure that all approvals are obtained prior to submission to the Administrator for inclusion on an agenda.

A calendar with due dates marked may be obtained from the Clerk to Council.



CITY OF SENECA

P.O. Box 4773
221 East North First Street
Seneca, South Carolina 29679
(864)885-2700 Fax: (864)885-2701
www.Seneca.SC.US

Belinda S Harper
Finance Officer/Clerk-Treasurer

March 18, 2010

Oconee County Council
415 South Pine Street
Walhalla, SC 29691

Oconee County Council Members,

The City of Seneca has budgeted \$503,000.00 per the Fire Contract for the current 2009/2010 budget year. This budget amount was given to the City of Seneca by Oconee County and we set our budget accordingly.

As of this date, the City of Seneca has only received \$454,678.54 of that budgeted amount. I respectfully ask you to disburse the balance of \$48,321.46 to the City of Seneca per our Fire Contract.

Sincerely,


Belinda S. Harper



**MINUTES
TRANSPORTATION COMMITTEE
WORKSHOP MEETING
March 17, 2010**

Keowee River Project: Follow-up Report from Planning/Road Departments:

It is the recommendation of the Committee that Council approve that the Planning and Road Departments continue to work with the developer and their engineering firm to assure that all public safety issues are identified and resolved.

Ongoing Project Status/Staff Report: County Engineer:

Mr. Mack Kelly, County Engineer, addressed weather events and projects for emergency service, Solid Waste, Building Maintenance, Sheriff Department & PRT.

Mr. Kelly also provided an update regarding the Bennettsville Road and Jenkins Bridge Road projects.

Cobb Bridge conceptual drawings were presented to the Committee for review and discussion. Lastly, Mr. Kelly addressed the following issues:

- Alice Lane: The committee requested that Mr. Kelly approach the residents again to obtain right-of-way on this road.
- Road Closure Status: Mr. Kelly reported that Crooks Road, High Point Road and Dr. Johns Road are in the process of being closed and that he continues to work closely with the attorney to ensure that the process moves forward as quickly as possible.
- Budget Concerns: Mr. Kelly noted that he has approximately \$304,000 remaining in the paving budget and that the CTC has committed verbally to an additional \$860,000. It was the consensus of the committee that Mr. Kelly follow-up with the Delegation Office to obtain written confirmation of the amount.
- BRC Road: Mr. Kelly noted that this issue had legal issues and requested an Executive Session to discuss the issues. The committee agreed to hold an Executive Session at the end of this meeting.

Approved Citizen Appearances / Requests

Request to Close a Portion of Stadium Road / Mr. Joe Davis

Mr. Davis addressed the Committee utilizing a map [filed with these minutes] requesting that the Committee approve the closure of the end portion of Stadium Road. Mr. Davis stated that he own all adjoining property. He stated that he has received approval from SDOC Bus Superintendent, Mr. Sammy Grant; and Mr. Terry Pruitt, Pioneer Water. Discussion followed.

Mr. Thrift stated that the Committee would visit the road and notify Mr. Davis regarding their decision.

Army Corp of Engineers [COE] Request to take over maintenance of Tee Ben Trail

The Committee accepted the recommendation of the County Engineer and denied the request.

Approved Staff Appearances / Requests

PRT / Mr. Phil Shirley

Mr. Shirley addressed the Committee and reported on the Road Department's assistance with the South Cove Park Retaining Wall Project partially funded by a PARD grant.

[OVER]

Old Business:

Whitewater Lake

Mr. Thrift asked Mr. Kelly to follow up with the residents to obtain right-of-ways as required.

Tamassee Middle School

Mr. Kelly stated that he would contact the sponsoring teacher and provide her with information to contact the state, SDOC and the town to address the safety concerns.

Heritage Fair Road Needs

Mr. Thrift asked Mr. Kelly, the Administrator and the Economic Development Director to meet with Fair representatives to clearly identify needs and to report back to the committee.

Executive Session:

Mr. Corbeil made a motion, seconded by Mr. McCall, approved 3 – 0 to direct staff to pursue a remedy to issues related to BRC road as discussed in Executive Session.



NOTES
BUDGET, FINANCE & ADMINISTRATION COMMITTEE
WORKSHOP MEETING
April 10, 2010
COUNCIL CHAMBERS, OCONEE ADMINISTRATIVE OFFICES
415 S. PINE STREET, WALHALLA, SC

Council reviewed in some detail but made no changes regarding the following:

- **Revenues**
- **Budget Summary & Highlights**
- **Capital Requests**
- **Personnel Requests**
- **School District of Oconee County [SDOC] Budget Review**
Council stated their intention to make no significant changes to the requested budget amount for SDOC for FY 2010-2011.
- **Tri County Technology College Budget Review**
Council directed Administration and necessary staff to meeting with Tri County Tech Administration and finance to discuss their budget request further.

Wednesday, April 21, 2010 @ 6:00 p.m. [anticipated to last 3 hours]

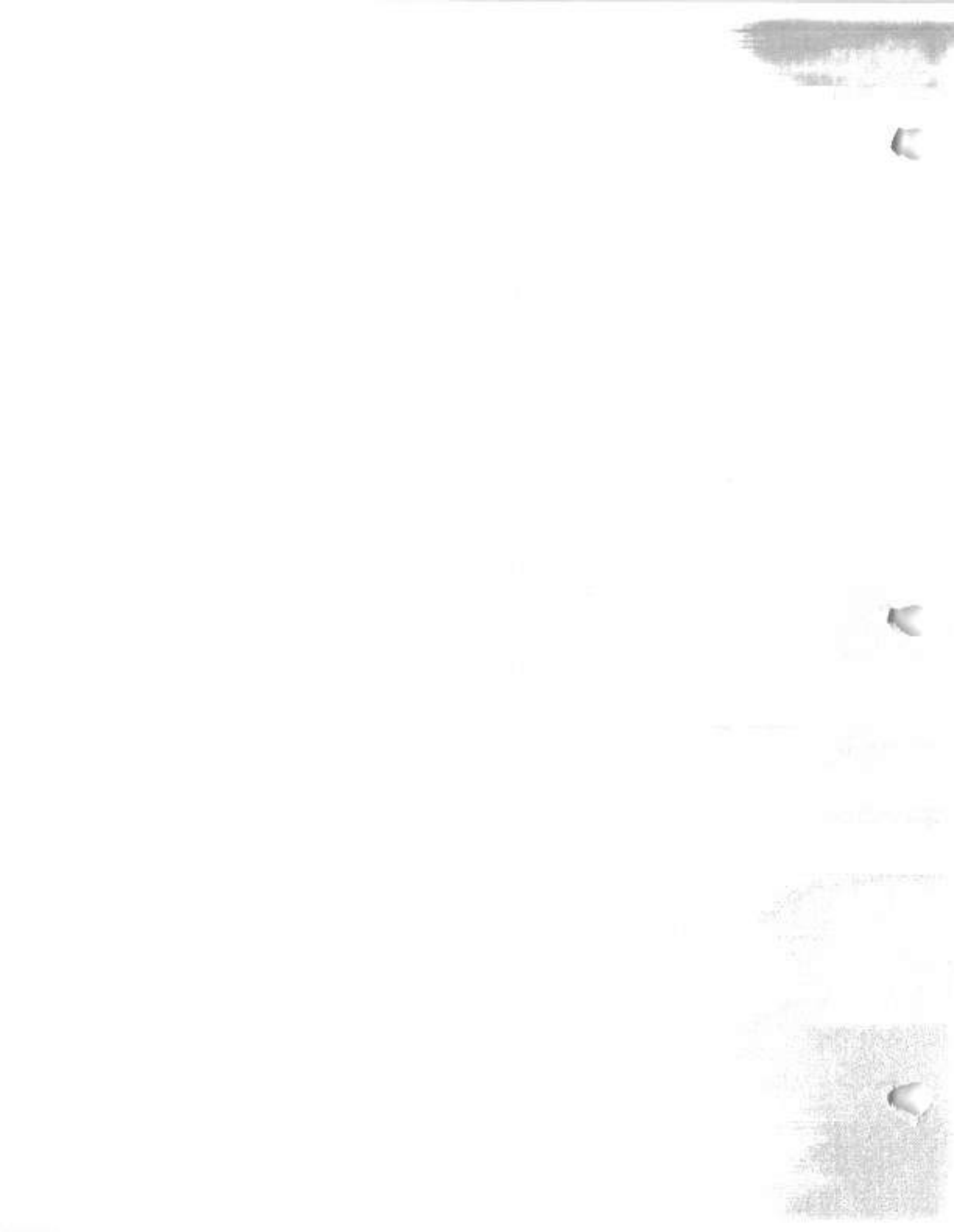
Thursday, April 22, 2010 @ 6:00 p.m. [anticipated to last 3 hours]

Tuesday, April 27, 2010 @ 6:00 p.m. [anticipated to last 3 hours]

Mr. Dexter noted that additional meetings might be scheduled if needed.

After discussion with Mr. Klugh and Ms. Brown it was decided to begin with a review of elected officials budgets at the April 21, 2010 meeting.

Material Submitted
by
Mr. Bo Horne
in support of his
Public Comment



TRANSMITTAL FORM, REVENUE BONDS

TO: Mr. Delbert Singleton
 State Budget and Control Board
 601 Wade Hampton Building
 Columbia, SC 29201
 P.O. Box 12444, Columbia, SC 29211

DATE: January 28, 2010
 Submitted for BCB Meeting on:
February 23, 2010

FROM: McNAIR LAW FIRM, P.A.

 Name of Law Firm
104 S. Main Street, Suite 700, P. O. Box 447 (29602)

 Street Address/Box Number
Greenville, SC 29601

 City, State, Zip Code
(864) 271-4940

 Area Code/Telephone Number

\$5,500,000

 Amount of Issue
Oconee County, South Carolina

 Name of Issuing Authority
Special Source Revenue Bonds

 Type of Bonds or Notes
April/May, 2010 (1st issue)

 Projected Issue Date

Project Name: Infrastructure Improvements for Oconee County Joint County Business Park

Description: (a) acquiring, designing, constructing and improving roads and sidewalks, including site preparation, landscaping and streetscaping, and acquisition of land whereon such infrastructure will be located; and (b) acquiring, designing and constructing lakes, parks, pathways and other public areas, including site preparation and landscaping, and acquisition of land whereon such infrastructure will be located; and (c) acquiring, designing, constructing and improving such other infrastructure necessary for the continued economic development of the County.

Employment as a result of the project: n/a

Ceiling Allocation Required	Refunding Involved	Project Approved Previously
Yes (\$ _____) <input checked="" type="checkbox"/> No _____	Yes (\$ _____) <input type="checkbox"/> No _____	Yes (\$ _____) <input type="checkbox"/> No _____
Amount	Amount	Amount

Documents enclosed (executed original and two copies of each):
 (ALL documents required for state law approval; A and C only for ceiling allocation only.)

- A. Petition
- B. Resolution or Ordinance
 Inducement Resolution or comparable preliminary approval
- C. _____
- D. _____ Department of Health and Environmental Control Certificate *if required (Not required)*
- E. Budget and Control Board Resolution and Public Notice *(original)*
 Plus 3 copies for certification and return to bond counsel

F. Draft bond counsel opinion letter

G. Processing Fee
 Amount: \$3,000.00 Check No: 186099
 Payor: Oconee County, South Carolina

Bond Counsel: McNair Law Firm, P.A. By: Michael W. Burns

 Typed Name of Bond Counsel Michael W. Burns Signature

January 28, 2010

VIA FEDERAL EXPRESS

Mr. Delbert Singleton
State Budget and Control Board
Wade Hampton Office Building, Room 601
Columbia, South Carolina 29201

Re: Not Exceeding \$5,500,000 Oconee County, South Carolina,
Special Source Revenue Bonds
Our Client/Matter No.: 006898.00059

Dear Mr. Singleton:

I am enclosing the transmittal form and other documents in connection with the above-referenced matter. We request that consideration of this special source revenue bond issue be placed on the State Budget and Control Board's agenda for its meeting on February 23, 2010. Along with the transmittal form, the following documents are enclosed:

1. Three (3) copies of a Petition of Oconee County dated January 26, 2010;
2. Three (3) copies of a Resolution of Oconee County Council adopted January 26, 2010;
3. Three (3) copies of an Oconee County General Bond Ordinance, and three (3) copies of a First Supplemental Ordinance to be considered by Oconee County Council;
4. Four (4) execution copies of a Resolution of the State Budget and Control Board. Upon adoption, please return three (3) certified copies to me;
5. Three (3) copies of a draft of our Firm's bond counsel opinion;
6. Oconee County check #186099 payable to SC Budget and Control Board representing the Board's processing fee.

McNair Law Firm, P.A.
Bank of America Plaza
101 North Main Street, Suite 900
Greenville, SC 29601

Mailing Address
Post Office Box 447
Greenville, SC 29602

mcnair.net


Delbert Singleton
January 28, 2010
Page 2

MCNAIR
ATTORNEYS

Thank you for your assistance. If additional information is needed, please contact me. With kind regards, I am

Very truly yours,

MCNAIR LAW FIRM, P.A.



By: Michael W. Burns

Enclosures: As Noted.

cc: Gene Klugh (via e-mail only)(w/out encl.)
Kendra Brown (via e-mail only)(w/out encl.)
Thomas L. Martin, Esq. (via e-mail only)(w/out encl.)
Daniel R. McLeod, Jr., Esq. (via e-mail only)(w/out encl.)

STATE OF SOUTH CAROLINA)
OCONEE COUNTY)

TO THE STATE BUDGET)
AND CONTROL BOARD OF)
SOUTH CAROLINA)

PETITION

This Petition of Oconee County, South Carolina (the "County"), pursuant to Title 4, Chapter 29 of the South Carolina Code of Laws, 1976, as amended (the "Code"), and specifically Section 4-29-140 thereof, respectfully shows:

1. The County Council of Oconee County (the "County Council") is the governing body of the County and as such is the "governing board" of the County referred to in Title 4, Chapter 29 of the Code.

2. Title 4, Chapter 29 of the Code, among other things, empowers the County, subject to obtaining the approval of the State Budget and Control Board of South Carolina, pursuant to Section 4-29-140 of the Code, to issue special source revenue bonds for the purpose of paying the cost of designing, acquiring, constructing, improving or expanding infrastructure as referred to in Section 4-29-68(A)(2) of the Code and to secure the payment of such bonds from payments in lieu of taxes (the "Park Revenues") received and retained by the County under Section 13 of Article VIII of the Constitution of the State.

3. The County is authorized and empowered under and pursuant to the provisions of Article VIII, Section 13 of the Constitution, in conjunction with Section 4-1-175 of the Code, to jointly develop joint county industrial and business parks with other counties wherein the area comprising the parks and all property having a situs therein is exempt from all ad valorem taxation but, instead, pays Park Revenues; and, to issue special source revenue bonds secured by such Park Revenues for the purpose of paying the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the issuer and for improved or unimproved real estate used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the issuer and costs of issuance of the bonds.

4. The County has entered into, and may continue to enter into, various agreements for the development of joint county industrial and business parks (collectively, the "Park Agreements") pursuant to Section 13 of Article VIII of the Constitution of the State and Section 4-1-170 of the Code.

5. The County intends to undertake one or more of the following projects located in or adjacent to an Oconee County Joint County Business Park in order to enhance the continued economic development of the County: (a) acquiring, designing, constructing and improving roads and sidewalks, including site preparation, landscaping and streetscaping, and acquisition of land

whereon such infrastructure will be located; (b) acquiring, designing and constructing lakes, parks, pathways and other public areas, including site preparation and landscaping, and acquisition of land whereon such infrastructure will be located; and (c) acquiring, designing, constructing and improving such other infrastructure necessary for the continued economic development of the County as permitted by the Code (collectively, the "Projects").

6. In furtherance thereof, the County proposes to issue in one or more series, subject to the approval of the State Budget and Control Board of South Carolina, special source revenue bonds (the "Bonds") in the aggregate principal amount of not exceeding \$5,500,000 in order to defray all or a portion of the costs of the Projects and pay costs of issuance of the Bonds.

7. Pursuant to Section 4-29-60 of the Code, the County Council has made the requisite findings that: (i) the Project will subservise the purposes of the Title 4, Chapter 29 of the Code; (ii) it is anticipated that the Projects will benefit the general public welfare of the County by providing public benefits not otherwise provided locally; (iii) the Projects will give rise to no charge against the County's general credit or taxing power; (iv) the principal amount of the Bonds required to finance a portion of the Projects and costs of issuance of the Bonds is expected to not exceed \$5,500,000; (v) the amount necessary in each year to pay the principal of and the interest on the Bonds will be set forth in one or more ordinances to be enacted by the County Council before the issuance of the Bonds; (vi) the County may establish a reserve fund in connection with the retirement of the Bonds; and (vii) the County will make arrangements so that the costs of maintaining the Projects in good repair, and the costs of keeping the Projects properly insured, if any, are paid.

8. Pursuant to Section 4-29-140 of the Code, the County sets forth the following information:

(a) It is expected that the Projects will result in the stimulation of the economy of the County, and that the completion of such Projects will promote increased opportunities for economic growth and development within the County.

(b) It is estimated that the cost of the Projects is not less than \$5,500,000.

(c) The Bonds will be issued pursuant to ordinances to be enacted by the County Council. The Bonds, together with the interest thereon, will be payable solely from and secured by a pledge of a portion of the Park Revenues received and retained by the County under the Park Agreements, which shall be irrevocably pledged to the payment of the principal of and interest on the Bonds. The Bonds, and the interest thereon, shall be (i) payable solely from all or a specifically described part of the Park Revenues; (ii) not secured by, or in any way entitled to, a pledge of the full faith, credit, or taxing power of the County; (iii) not an indebtedness of the County within the meaning of any state constitutional provision or statutory limitation but payable solely from a special source that does not include revenues from any tax or license; and (iv) not a pecuniary liability of the County or a charge against the County's general credit or taxing power.

Upon the basis of the foregoing, the County respectfully requests that the State Budget and Control Board:

1. Accept the filing of this Petition;
2. Conduct such review as it considers advisable;
3. Approve the proposal of the County to execute and deliver the Bonds pursuant to the Code to defray a portion of the costs of the Projects and costs of issuance of the Bonds; and
4. Cause notice of its approval to be published in the manner set forth in Section 4-29-140 of the Code.

[Signatures on following page]

Respectfully submitted,

OCONEE COUNTY, SOUTH CAROLINA

By: Ronald T. Dyer
Chairman, Oconee County Council
Oconee County, South Carolina

By: J. E. Kiefer
Interim Administrator
Oconee County, South Carolina

(SEAL)

ATTEST:

J. E. Kiefer
Clerk to Oconee County Council
Oconee County, South Carolina

Dated: January 26, 2010

**STATE OF SOUTH CAROLINA
OCONEE COUNTY
RESOLUTION R2010-03**

(OCONEE COUNTY, SPECIAL SOURCE REVENUE BONDS)

A RESOLUTION MAKING APPLICATION TO THE STATE BUDGET AND CONTROL BOARD OF SOUTH CAROLINA FOR APPROVAL OF THE ISSUANCE BY OCONEE COUNTY, SOUTH CAROLINA, OF ITS SPECIAL SOURCE REVENUE BONDS IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT EXCEEDING \$5,500,000, PURSUANT TO THE PROVISIONS OF SOUTH CAROLINA CODE ANNOTATED, TITLE 4, CHAPTER 1 AND 29 (1976), AS AMENDED.

WHEREAS, Oconee County, South Carolina (the "County"), acting by and through its County Council (the "Council"), is authorized and empowered under and pursuant to the provisions of the South Carolina Constitution (the "Constitution") and Section 4-1-175 and Section 4-29-68 of the South Carolina Code of Laws 1976, as amended (the "Code"), to issue special source revenue bonds; and

WHEREAS, the County is authorized and empowered under and pursuant to the provisions of Article VIII, Section 13 of the Constitution, in conjunction with Sections 4-1-175 and 4-29-68 of the Code, to jointly develop joint county industrial and business parks with other counties wherein the area comprising the parks and all property having a situs therein is exempt from all ad valorem taxation but, instead, pays fees in lieu of tax (the "Park Revenues"); and, to issue special source revenue bonds secured by such Park Revenues for the purpose of paying the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the issuer or the project, and for improved or unimproved real estate used in the operation of a manufacturing or commercial enterprise, which property is determined by the issuer to enhance the economic development of the issuer, and costs of issuance of the bonds; and

WHEREAS, the County has entered into, and may continue to enter into, various agreements for the development of joint county industrial and business parks (collectively, the "Park Agreements") pursuant to Section 13 of Article VIII of the Constitution of the State and Section 4-1-170 of the Code; and

WHEREAS, Section 4-29-140 of the Code provides that no bond shall be issued pursuant to the provisions of Title 4, Chapter 29 of the Code until the proposal of the County to issue the bonds shall receive the approval of the State Budget and Control Board of South Carolina; and

WHEREAS, the County intends to undertake one or more of the following projects located in or adjacent to an Oconee County Joint County Business Park in order to enhance the continued economic development of the County: (a) acquiring, designing, constructing and improving roads and sidewalks, including site preparation, landscaping and streetscaping, and acquisition of land

whereon such infrastructure will be located; (b) acquiring, designing and constructing lakes, parks, pathways and other public areas, including site preparation and landscaping, and acquisition of land whereon such infrastructure will be located; and (c) acquiring, designing, constructing and improving such other infrastructure necessary for the continued economic development of the County as permitted by the Code (collectively, the "Projects"); and

WHEREAS, in furtherance thereof, the County proposes to issue, subject to the approval of the State Budget and Control Board of South Carolina, one or more series of special source revenue bonds in an amount not to exceed \$5,500,000 (the "Bonds") in order to defray all or a portion of the costs of the Projects and pay costs of issuance of the Bonds; and

WHEREAS, it is now deemed advisable by the County Council of the County to file with the State Budget and Control Board of South Carolina, in compliance with Section 4-29-140 of the Code, the Petition of the County requesting approval by the State Budget and Control Board of South Carolina of the proposed issuance of the Bonds;

NOW, THEREFORE, BE IT RESOLVED by the County Council of Oconee County, South Carolina as follows:

Section 1. Findings and Determinations. It is hereby found, determined and declared as follows:

(a) The Projects constitute "infrastructure" as such term is referred to in Section 4-29-68 of the Code, and the issuance of the Bonds in one or more series in the aggregate principal amount not to exceed \$5,500,000 to defray all or a portion of the costs of the Projects and costs of issuance of the Bonds will serve the purposes and in all respects conform to the provisions and requirements of the Constitution and the Code.

(b) It is expected that the Projects will result in the stimulation of the economy of the County, and that the completion or acquisition of such projects will promote increased opportunities for economic growth and development within the County.

(c) A reasonable estimate of the cost of the Projects, including necessary expenses incidental thereto, will be at least \$5,500,000.

(d) Pursuant to Section 4-29-60 of the Code, the Council finds that: (i) the Projects will subserve the purposes of Title 4, Chapter 29 of the Code; (ii) it is anticipated that the Projects will benefit the general public welfare of the County by providing public benefits not otherwise provided locally; (iii) the Projects will give rise to no charge against the County's general credit or taxing power; (iv) the principal amount of the Bonds required to finance a portion of the costs of the Projects and costs of issuance of the Bonds are expected to not exceed \$5,500,000; (v) the amount necessary in each year to pay the principal of and the interest on the Bonds will be set forth in one or more ordinances to be enacted by the County Council prior to the issuance of the Bonds; (vi) the County may establish a reserve fund in connection with the retirement of the Bonds; and (vii) the County will make arrangements so that the costs of maintaining the Projects in good repair, and the costs of keeping the Projects properly insured, if any, are paid.

Section 2. Submission of Petition. There be and is hereby authorized and directed the submission on behalf of the County a Petition requesting the approval by the State Budget and Control Board of the proposal of the County to issue the Bonds pursuant to the within referenced provisions of the Code. The Petition, which constitutes and is hereby made a part of this authorizing Resolution, to be in substantially the form attached hereto as Exhibit A.

Section 3. Execution of Petition. The Chairman or Vice-Chairman of the County Council of the County and the Interim County Administrator are hereby authorized and directed to execute the Petition in the name and on behalf of the County; and the Clerk to County Council of the County is hereby authorized and directed to attest the same and thereafter to submit an executed copy of this Resolution to the State Budget and Control Board of South Carolina in Columbia, South Carolina.

Section 4. Effect of Resolution. All orders and resolutions and parts thereof in conflict herewith are to the extent of such conflict hereby repealed, and this Resolution shall take effect and be in full force from and after its adoption.

[SIGNATURE PAGE FOLLOWS]

Adopted this 26th day of January, 2009.

OCONEE COUNTY, SOUTH CAROLINA

By: Raymond T. Dwyer
Chairman, Oconee County Council
Oconee County, South Carolina

By: J. T. Kraft
Interim Administrator
Oconee County, South Carolina

(SEAL)

ATTEST

[Signature]
Clerk to County Council
Oconee County, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA)
)
OCONEE COUNTY)

TO THE STATE BUDGET)
AND CONTROL BOARD OF)
SOUTH CAROLINA)

P E T I T I O N

This Petition of Oconee County, South Carolina (the "County"), pursuant to Title 4, Chapter 29 of the South Carolina Code of Laws, 1976, as amended (the "Code"), and specifically Section 4-29-140 thereof, respectfully shows:

1. The County Council of Oconee County (the "County Council") is the governing body of the County and as such is the "governing board" of the County referred to in Title 4, Chapter 29 of the Code.

2. Title 4, Chapter 29 of the Code, among other things, empowers the County, subject to obtaining the approval of the State Budget and Control Board of South Carolina, pursuant to Section 4-29-140 of the Code, to issue special source revenue bonds for the purpose of paying the cost of designing, acquiring, constructing, improving or expanding infrastructure as referred to in Section 4-29-68(A)(2) of the Code and to secure the payment of such bonds from payments in lieu of taxes (the "Park Revenues") received and retained by the County under Section 13 of Article VIII of the Constitution of the State.

3. The County is authorized and empowered under and pursuant to the provisions of Article VIII, Section 13 of the Constitution, in conjunction with Section 4-1-175 of the Code, to jointly develop joint county industrial and business parks with other counties wherein the area comprising the parks and all property having a situs therein is exempt from all ad valorem taxation but, instead, pays Park Revenues; and, to issue special source revenue bonds secured by such Park Revenues for the purpose of paying the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the issuer and for improved or unimproved real estate used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the issuer and costs of issuance of the bonds.

4. The County has entered into, and may continue to enter into, various agreements for the development of joint county industrial and business parks (collectively, the "Park Agreements") pursuant to Section 13 of Article VIII of the Constitution of the State and Section 4-1-170 of the Code.

5. The County intends to undertake one or more of the following projects located in or adjacent to an Oconee County Joint County Business Park in order to enhance the continued economic development of the County: (a) acquiring, designing, constructing and improving roads and sidewalks, including site preparation, landscaping and streetscaping, and acquisition of land whereon such infrastructure will be located; (b) acquiring, designing and constructing lakes, parks, pathways and other public areas, including site preparation and landscaping, and acquisition of land whereon such infrastructure will be located; and (c) acquiring, designing, constructing and improving such other infrastructure necessary for the continued economic development of the County as permitted by the Code (collectively, the "Projects").

6. In furtherance thereof, the County proposes to issue in one or more series, subject to the approval of the State Budget and Control Board of South Carolina, special source revenue bonds (the "Bonds") in the aggregate principal amount of not exceeding \$5,500,000 in order to defray all or a portion of the costs of the Projects and pay costs of issuance of the Bonds.

7. Pursuant to Section 4-29-60 of the Code, the County Council has made the requisite findings that: (i) the Project will subserve the purposes of the Title 4, Chapter 29 of the Code; (ii) it is anticipated that the Projects will benefit the general public welfare of the County by providing public benefits not otherwise provided locally; (iii) the Projects will give rise to no charge against the County's general credit or taxing power; (iv) the principal amount of the Bonds required to finance a portion of the Projects and costs of issuance of the Bonds is expected to not exceed \$5,500,000; (v) the amount necessary in each year to pay the principal of and the interest on the Bonds will be set forth in one or more ordinances to be enacted by the County Council before the issuance of the Bonds; (vi) the County may establish a reserve fund in connection with the retirement of the Bonds; and (vii) the County will make arrangements so that the costs of maintaining the Projects in good repair, and the costs of keeping the Projects properly insured, if any, are paid.

8. Pursuant to Section 4-29-140 of the Code, the County sets forth the following information:

(a) It is expected that the Projects will result in the stimulation of the economy of the County, and that the completion of such Projects will promote increased opportunities for economic growth and development within the County.

(b) It is estimated that the cost of the Projects is not less than \$5,500,000.

(c) The Bonds will be issued pursuant to ordinances to be enacted by the County Council. The Bonds, together with the interest thereon, will be payable solely from and secured by a pledge of a portion of the Park Revenues received and retained by the County under the Park Agreements, which shall be irrevocably pledged to the payment of the principal of and interest on the Bonds. The Bonds, and the interest thereon, shall be (i) payable solely from all or a specifically described part of the Park Revenues; (ii) not secured by, or in any way entitled to, a pledge of the full faith, credit, or taxing power of the County; (iii) not an indebtedness of the County within the meaning of any state constitutional provision or statutory limitation but payable solely from a

special source that does not include revenues from any tax or license; and (iv) not a pecuniary liability of the County or a charge against the County's general credit or taxing power.

Upon the basis of the foregoing, the County respectfully requests that the State Budget and Control Board:

1. Accept the filing of this Petition;
2. Conduct such review as it considers advisable;
3. Approve the proposal of the County to execute and deliver the Bonds pursuant to the Code to defray a portion of the costs of the Projects and costs of issuance of the Bonds; and
4. Cause notice of its approval to be published in the manner set forth in Section 4-29-140 of the Code.

[Signatures on following page]

Respectfully submitted,

OCONEE COUNTY, SOUTH CAROLINA

By: _____
Chairman, Oconee County Council
Oconee County, South Carolina

By: _____
Interim Administrator
Oconee County, South Carolina

(SEAL)

ATTEST:

Clerk to Oconee County Council
Oconee County, South Carolina

Dated: January 26, 2010

OCONEE COUNTY, SOUTH CAROLINA

FIRST SUPPLEMENTAL ORDINANCE

A FIRST SUPPLEMENTAL ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF A NOT EXCEEDING \$5,500,000 SPECIAL SOURCE REVENUE BOND, SERIES 2010, OF OCONEE COUNTY, SOUTH CAROLINA; PRESCRIBING THE FORM AND DETAILS OF SUCH BOND; AUTHORIZING THE CHAIRMAN OR VICE-CHAIRMAN AND THE COUNTY ADMINISTRATOR TO DETERMINE CERTAIN MATTERS RELATING TO THE BOND; PROVIDING FOR THE PAYMENT OF THE BOND AND THE DISPOSITION OF THE PROCEEDS THEREOF; AND OTHER MATTERS RELATING THERETO.

BE IT ORDAINED, BY THE COUNTY COUNCIL OF OCONEE COUNTY, SOUTH CAROLINA, IN COUNCIL ASSEMBLED:

Section 1. Definitions. The terms in this Section 1 and all words and terms defined in the General Bond Ordinance (the "General Bond Ordinance"), shall for all purposes of this First Supplemental Ordinance have the respective meanings given to them in the General Bond Ordinance and in Section 1 hereof. The following terms as used in this First Supplemental Ordinance shall, unless the context requires otherwise, have the following meanings:

"2010 Projects" shall mean the Costs of Acquisition and Construction of one or more of the following projects: (a) roads and sidewalks, including site preparation, landscaping and streetscaping, and acquisition of land whereon such infrastructure will be located; (b) lakes, parks, pathways and other public areas, including site preparation and landscaping, and acquisition of land whereon such infrastructure will be located; and (c) such other infrastructure necessary for the continued economic development of the County as permitted by the Code.

"Bond of 2010" shall mean the Oconee County, South Carolina, Special Source Revenue Bond in the aggregate principal amount of not exceeding \$5,500,000 authorized to be issued hereunder.

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Construction Funds of 2010" shall mean the funds of that name established pursuant to Section 7 herein.

"Custodian" shall mean the bank selected by the County as custodian of the Construction Funds of 2010.

"Debt Service Fund of 2010" shall mean the fund of that name established pursuant to Section 5 herein.

"First Supplemental Ordinance" shall mean this First Supplemental Ordinance.

"Interest Payment Date" shall mean April 1 of each year, commencing April 1, 2011.

"Paying Agent" shall mean Branch Banking and Trust Company, as Paying Agent for the Bond of 2010.

"Principal Payment Date" shall mean April 1 of each year, commencing April 1, 2012 and ending April 1, 2025, or such other dates and years as determined by the Chairman or Vice-Chairman of County Council and the County Administrator.

"Purchaser" shall mean the purchaser of the Bond of 2010.

"Registrar" shall mean Branch Banking and Trust Company, as Registrar for the Bond of 2010.

Section 2. Certain Findings and Determinations. The Council hereby finds and determines:

(a) This First Supplemental Ordinance supplements the General Bond Ordinance, constitutes and is a "Supplemental Ordinance" within the meaning of such quoted term as defined and used in the General Bond Ordinance, and is enacted under and pursuant to the General Bond Ordinance.

(b) The Bond of 2010 constitutes and is a "Bond" as defined and used in the General Bond Ordinance.

(c) The Pledged Revenues pledged under the General Bond Ordinance and this First Supplemental Ordinance are not encumbered by any pledge thereof, other than the pledge thereof created by the General Bond Ordinance and this First Supplemental Ordinance for payment and security of the Bond of 2010.

(d) There does not exist an Event of Default, nor does there exist any condition which, after the passage of time or the giving of notice, or both, would constitute such Event of Default.

(e) The Bond of 2010 is being issued for the purposes of paying a portion of the Costs of Acquisition and Construction of the 2010 Projects and Costs of Issuance of the Bond of 2010. The estimated Costs of Acquisition and Construction of the 2010 Projects and Costs of Issuance of the Bond of 2010 are to be financed in part with the proceeds of the Bond of 2010.

(f) The Purchaser has offered to purchase the Bond of 2010.

(g) The proceeds of the Bond of 2010 shall be used to: (1) defray the Costs of Acquisition and Construction of the 2010 Projects; and (2) pay Costs of Issuance of the Bond of 2010.

(h) It is necessary and in the best interest of the County to issue the Bond of 2010 in the aggregate principal amount of not exceeding \$5,500,000 in accordance with the Act, the General Bond Ordinance and this First Supplemental Ordinance for the purposes set forth above.

Section 3. Authorization and Details of Bond of 2010; Delegation of Authority to Determine Certain Matters Relating to the Bond of 2010.

(a) There is hereby authorized to be issued a special source revenue bond designated "Oconee County, South Carolina, Special Source Revenue Bond, Series 2010", in the principal amount of not exceeding \$5,500,000. The proceeds of the Bond of 2010 shall be used for the purposes set forth in Section 2(g) above.

(b) The offer of the Purchaser to purchase the Bond of 2010 is hereby accepted. The County Administrator is hereby authorized and directed to accept the offer of the Purchaser and deliver such acceptance to the Purchaser. In the event of a conflict in the terms and provisions of

such offer and this First Supplemental Ordinance, the terms and provisions of this First Supplemental Ordinance shall prevail.

(c) The Bond of 2010 shall be represented by a single, fully registered bond; shall be registered in the name of the Purchaser; shall be dated the date of delivery; and shall be in the principal amount of not exceeding \$5,500,000. Interest on the unpaid principal amount of the Bond of 2010 shall be payable on April 1 of each year commencing April 1, 2011 until its maturity or prior redemption, or such other date as determined by the Chairman or Vice-Chairman of County Council and the County Administrator. The Bond of 2010 shall be payable annually in principal installments on April 1 of each year, commencing April 1, 2012, in the years and in the principal amounts as set forth in the table below. Interest on the Bond of 2010 shall be calculated on the basis of a 360-day year comprising twelve 30-day months.

The Bond of 2010 will be payable on April 1 in each of the years and in the principal amounts as follows: [Principal repayment schedule to be inserted]

The Chairman or Vice-Chairman of County Council and the County Administrator are authorized adjust the principal payment schedule set forth above, provided the Bond of 2010 shall not be issued in an aggregate principal amount which exceeds \$5,500,000, and its final maturity shall not extend beyond April 1, 2025.

The Bond of 2010, and the interest thereon, is a special obligation of the County payable solely from, and secured by a pledge of the Pledged Revenues. The Bond of 2010, and the interest thereon are, (a) payable solely from all or a specifically described portion of the Pledged Revenues retained by the County; (b) not secured by, or in any way entitled to, a pledge of the full faith, credit, or taxing power of the County; (c) not an indebtedness of the County within the meaning of any state constitutional provision or statutory limitation but is payable solely from a special source that does not include revenues from any tax or license; and (d) not a pecuniary liability of the County or a charge against the County's general credit or taxing power.

(d) The Chairman or Vice-Chairman of the Council and the County Administrator are empowered to include any additional provisions in the Bond of 2010 as requested by the Purchaser in accordance with its proposal to purchase the Bond of 2010.

(e) Without further authorization, the Council hereby authorizes and directs the Chairman or Vice-Chairman of the Council to execute the Bond of 2010 in the name of the County, and authorizes and directs the Clerk to the Council to attest the manual signature of the Chairman or Vice-Chairman of the Council under the seal of the County impressed, imprinted or reproduced thereon.

(f) The Bond of 2010 shall originally be dated its date of initial issuance and shall be issued as a fully registered Bond.

Section 4. Optional Redemption of Bond of 2010. The Bond of 2010 shall be subject to redemption on such terms as determined by the Chairman or Vice-Chairman of County Council and the County Administrator. In the event the Bond of 2010 is called for redemption, the County shall

give notice of redemption of such Bond by first-class mail, postage prepaid, to the registered owner of such Bond as shown on the Books of Registry of the County not less than ten (10) days prior to the date fixed for the redemption thereof.

Section 5. Establishment of Debt Service Fund of 2010. In accordance with Section 6.6 of the General Bond Ordinance, the Debt Service Fund of 2010 is hereby directed to be established with the Trustee for the Bond of 2010 on the date of original delivery of the Bond of 2010 for the benefit of the Purchaser of the Bond of 2010. In addition, there is hereby directed to be established within the Debt Service Fund of 2010 an Interest Account and a Principal Account for the payment of interest and principal, respectively, on the Bond of 2010 as the same become due and payable. The payments from the Pledged Revenues authorized herein shall be made at the times set forth in Section 6.6 of the General Bond Ordinance.

Section 6. Payment of the Bond of 2010. The Bond of 2010 is secured by a pledge of the Pledged Revenues referred to and subject to the limitations set forth in Section 6.3 of the General Bond Ordinance, and shall be subject to no prior liens or encumbrances other than as provided under the General Bond Ordinance and this First Supplemental Ordinance. The Bond of 2010 is further secured by a security interest in the respective Construction Fund of 2010, and the Interest Account and Principal Account in the Debt Service Fund of 2010 established for the Bond of 2010.

Section 7. Construction Fund of 2010. There is hereby created and established the Construction Fund of 2010 which fund shall be held by the Custodian. Payments from the Construction Fund of 2010 shall be made by the Custodian only upon receipt of the requisition below described.

A requisition signed by an Authorized County Representative, stating, with respect to each payment for 2010 Projects:

- (a) The amount to be paid;
- (b) The nature and purpose of the obligation for which such payment is requested;
- (c) The person, firm or corporation to whom such obligation is owed or to whom a reimbursable advance has been made;
- (d) That such obligation has been properly incurred and is a proper payment under the Bond of 2010 and has not been the basis of any previous advance;
- (e) That the County has not received notice of any mechanic's, materialmen's or other liens or right to liens or other obligations (other than those being contested in good faith) which should be satisfied or discharged before payment of such obligation is made; and
- (f) That such payment does not include any amount which is then entitled to be retained under any holdbacks or retainages provided for in any agreement.

With respect to any such requisition for payment for work, materials or supplies, a certificate signed by an Authorized County Representative, certifying that such obligation was incurred for costs, work, material or supplies in connection with the acquisition, construction or installation of the 2010 Projects and that such work was actually performed in a satisfactory manner and such materials or supplies were actually used in or for such acquisition, construction or installation or delivered for that purpose in accordance with the approved plans and specifications. Upon written direction to the Custodian by an Authorized County Representative, moneys in the Construction Fund of 2010 may also be expended for Costs of Issuance.

In making any such payment from the Construction Fund of 2010, the Custodian may rely on such directions, requisitions and certifications delivered to it pursuant to this Section 7 and the Custodian shall not have any liability with respect to making such payments in accordance with such directions, requisitions and certifications for any liability with respect to the proper application thereof by the County.

Section 8. Disposition of Proceeds of Bond of 2010. The proceeds derived from the sale of the Bond of 2010 shall be deposited with the Custodian for deposit in the Construction Funds of 2010 and used to pay the Costs of Acquisition and Construction of the 2010 Projects and to pay Costs of Issuance.

Section 9. Federal Tax Covenants. To the extent that the Bond of 2010 is issued on a federal tax-exempt basis, the County hereby covenants and agrees with the Purchaser that it will not take any action which will, or fail to take any action which failure will, cause interest such Bond to become includable in the gross income of the Purchaser for federal income tax purposes pursuant to the provisions of the Code and regulations promulgated thereunder in effect on the date of original issuance of such Bond; however, that for purposes of this covenant only, the County shall not be in violation of this covenant solely because it makes the irrevocable election under Section 54AA(d) or (g) (as applicable) of the Code with respect to the Bond of 2010 that it be issued as BABs. The County further covenants and agrees with the Purchaser that no use of the proceeds of the Bond of 2010 shall be made which, if such use had been reasonably expected on the date of issue of such Bond would have caused such Bond to be "arbitrage bonds," as defined in the Code; and to that end the County shall:

- (a) Comply with the applicable provisions of Section 103 and Sections 141 through 150 of the Code and any regulations promulgated thereunder so long as such Bond is Outstanding;
- (b) Establish such funds, make such calculations and pay such amounts, if necessary, in the manner and at the times required in order to comply with the requirements of the Code relating to required rebates of certain amounts to the United States; and
- (c) Make such reports of such information at the times and places required by the Code.

Section 10. Bank Qualified. As determined by the Chairman or Vice-Chairman of County Council or the County Administrator, or any of them acting alone, the Bond of 2010 may be designated as "qualified tax-exempt obligations" as defined in the Code. In such event the County covenants that, in accordance with the applicable provisions of the Code, the Bond of 2010 is designated as "qualified tax-exempt obligations" as defined in the Code. The County and all subordinate entities thereof do not anticipate issuing more than \$30,000,000 (exclusive of tax-exempt bonds or other obligations which are not included in the \$30,000,000 limitation under the applicable provisions of Section 265 of the Code) in tax-exempt bonds or other tax-exempt obligations in calendar year 2010 (other than private activity bonds which are "qualified 501(c)(3) bonds" as defined in the Code). The County represents that the sum of all tax-exempt obligations (other than tax-exempt bonds or other obligations not included in the \$30,000,000 limitation under the applicable provisions of Section 265 of the Code and private activity bonds) issued by the County and all subordinate entities thereof during calendar year 2010 is not reasonably expected to exceed \$30,000,000.

Section 11. Filings with Central Repository. In compliance with Section 11-1-85 of the South Carolina Code, the County covenants, so long as and to the extent required pursuant to Section 11-1-85, that it will file or cause to be filed with a central repository for availability in the secondary bond market when requested: (a) a copy of an annual independent audit of the County within thirty (30) days of the County's receipt thereof; and (b) event-specific information within thirty (30) days of the County's receipt of the audit affecting more than five percent (5%) of the Pledged Revenues, or the County's tax base.

The only remedy for failure by the County to comply with the covenant of this paragraph shall be an action for specific performance of this covenant; and failure to comply shall not constitute a default or an "Event of Default" under the Ordinance or this First Supplemental Ordinance. The County specifically reserves the right to amend or delete this covenant to reflect any change in Section 11-1-85 without the consent of any Bondholder.

Section 12. Further Actions. The Chairman of the Council, Vice-Chairman of the Council, County Administrator, Clerk to Council, Finance Director, County Attorney, and all other officers and employees of the County are hereby authorized and directed to take any and all such further actions as shall be deemed necessary or desirable in order to effectuate issuance of the Bond of 2010 and to carry out the intentions of this First Supplemental Ordinance.

Section 13. Designation of Registrar; Designation of Paying Agent; Designation of Custodian. The Council hereby designates Branch Banking and Trust Company as Registrar for the Bond of 2010. The Council hereby further designates Branch Banking and Trust Company as Paying Agent for the Bond of 2010. The Custodian of the Construction Funds of 2010 shall be selected by an Authorized County Representative. The Registrar, Paying Agent and Custodian shall signify their acceptances of their respective duties upon delivery of the Bond of 2010.

Section 14. Section Headings. The headings and titles of the several sections hereof shall be solely for convenience of reference and shall not affect the meaning, construction, interpretation or effect of this First Supplemental Ordinance.

Section 15. Notices. All notices, certificates or other communications hereunder or under the General Bond Ordinance shall be sufficiently given and shall be deemed given when mailed by first-class, postage prepaid, addressed as follows:

If to the County:

Oconee County, South Carolina
415 S. Pine Street
Walhalla, South Carolina 29691
Attention: County Administrator

If to the Registrar or Paying Agent:

Branch Banking and Trust Company
223 West Nash Street
Wilson, North Carolina 27893
Attention: Corporate Trust Department

Any party may, by notice given to the other parties, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 16. Repeal of Inconsistent Ordinances and Resolutions. All ordinances and resolutions of the County, and any part of any ordinance or resolution, inconsistent with this First Supplemental Ordinance are hereby repealed to the extent of such inconsistency.

Section 17. Effective Date. This First Supplemental Ordinance shall become effective upon its enactment.

[Execution follows on next page]

OCONEE COUNTY, SOUTH CAROLINA

(SEAL)

Chairman, County Council
Oconee County, South Carolina

ATTEST:

Administrator, Oconee County, South Carolina

Clerk to County Council,
Oconee County, South Carolina

[Execution Page]

STATE BUDGET AND CONTROL BOARD RESOLUTION
OCONEE COUNTY, SPECIAL SOURCE REVENUE BONDS

A RESOLUTION APPROVING THE ISSUANCE BY OCONEE COUNTY, SOUTH CAROLINA, OF SPECIAL SOURCE REVENUE BONDS IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT EXCEEDING \$5,500,000 PURSUANT TO THE PROVISIONS OF TITLE 4, CHAPTER 29, SOUTH CAROLINA CODE OF LAWS 1976, AS AMENDED.

WHEREAS, the County Council of Oconee County, South Carolina (the "County Council"), has, by submitting a petition (the "Petition") under and pursuant to the provisions of Title 4, Chapter 29, South Carolina Code of Laws 1976, as amended (the "Code"), specifically Section 4-29-140 thereof, requested the approval by the State Budget and Control Board of the issuance by Oconee County, South Carolina (the "County") pursuant to Section 4-1-175 and Section 4-29-68 of the Code of its Special Source Revenue Bonds in one or more series in an aggregate principal amount of not exceeding \$5,500,000 (the "Bonds"); and

WHEREAS, the County has entered into, and may continue to enter into, certain agreements with various partner counties for the development of joint county industrial and business parks (collectively, the "Parks") pursuant to Section 13 of Article VIII of the Constitution of the State of South Carolina and Section 4-1-170 of the Code in order to implement the public purposes enumerated therein; and

WHEREAS, the County proposes to issue the Bonds in one or more series in an aggregate principal amount of not exceeding \$5,500,000 for the purposes of defraying a portion of the costs of the following projects located in or adjacent to an Oconee County Joint County Business Park in order to enhance the continued economic development of the County: (a) acquiring, designing, constructing and improving roads and sidewalks, including site preparation, landscaping and streetscaping, and acquisition of land whereon such infrastructure will be located; (b) acquiring, designing and constructing lakes, parks, pathways and other public areas, including site preparation and landscaping, and acquisition of land whereon such infrastructure will be located; and (c) acquiring, designing, constructing and improving such other infrastructure necessary for the continued economic development of the County as permitted by the Code (collectively, the "Projects"), and costs of issuance of the Bonds; and

WHEREAS, the Bonds will be payable from and secured by a portion of the payments in lieu of taxes received and retained by the County attributable to properties located within the Parks pursuant to Section 13 of Article VIII of the Constitution of the State of South Carolina and Section 4-1-170 of the Code (the "Park Revenues"); and

WHEREAS, the County has submitted a certified copy of a Resolution adopted by the County Council on January 26, 2010, and a Petition of the County dated January 26, 2010, making application to the State Budget and Control Board for approval of the issuance of the

Bonds and the Petition. This Board has reviewed and considered each of such documents in its consideration of the Petition by the County;

NOW, THEREFORE, BE IT RESOLVED, by the State Budget and Control Board of the State of South Carolina (the "Board"), as follows:

1. Acceptance of Petition. The Board has made such review of the matters set forth in the Petition as it deems appropriate, and on the basis of such review it is hereby found, determined and declared:

a. The Petition filed by the County Council contains all matters required by law and the rules of this Board to be set forth therein, and that in consequence thereof the jurisdiction of this Board has been properly invoked under and pursuant to Section 4-29-140 of the Code; and

b. The Projects which are the subject of the Petition of the County Council are intended to promote the purposes of Section 4-29-68 of the Code and are reasonably anticipated to effect such result.

2. Approval of Proposal. In consequence of the foregoing, the proposal of the County to undertake the Projects, and to finance a portion of the costs thereof and expenses incidental thereto by the execution and delivery of the Bonds in one or more series in an aggregate principal amount of not exceeding \$5,500,000, secured by a pledge of a portion of the Park Revenues paid on behalf of properties located within the Parks, be and the same is hereby in all respects approved. This approval shall not be affected by any changes in the details of the proposal of the County so long as such changes do not impose a pecuniary liability upon the County or its general credit or taxing power.

3. Notice of Board's Action. Notice of the action taken by this Board in approving the above described undertaking of the County shall be published in the Daily Journal, which is a newspaper having general circulation in the County.

4. Form of Notice. The Notice, required in Section 3 above to be published, shall be in substantially the form set forth in Exhibit A of this Resolution.

5. Adoption of Resolution. This Resolution shall take effect immediately.

Adopted: February 23, 2010.

EXHIBIT A

NOTICE PURSUANT TO THE PROVISIONS
OF TITLE 4, CHAPTER 29,
SOUTH CAROLINA CODE OF LAWS 1976,
AS AMENDED

Notice is hereby given pursuant to the provisions and requirements of Title 4, Chapter 29, South Carolina Code of Laws 1976, as amended, specifically Section 4-29-140 thereof (the "Act"), that the State Budget and Control Board of South Carolina, pursuant to a Petition dated January 26, 2010, filed by the County Council of Oconee County, South Carolina, has given on February 23, 2010, its approval to the following undertaking by Oconee County, South Carolina:

The issuance by Oconee County of its Special Source Revenue Bonds in one or more series in the aggregate principal amount of not exceeding \$5,500,000 (the "Bonds"), to defray a portion of the costs of the following projects located in or adjacent to an Oconee County Joint County Business Park in order to enhance the continued economic development of the County: (a) acquiring, designing, constructing and improving roads and sidewalks, including site preparation, landscaping and streetscaping, and acquisition of land whereon such infrastructure will be located; (b) acquiring, designing and constructing lakes, parks, pathways and other public areas, including site preparation and landscaping, and acquisition of land whereon such infrastructure will be located; and (c) acquiring, designing, constructing and improving such other infrastructure necessary for the continued economic development of the County as permitted by the Code (collectively, the "Projects"), and costs of issuance of the Bonds. A portion of the payments in lieu of taxes (the "Park Revenues") from properties located within certain joint county industrial and business parks (collectively, the "Parks") in the County pursuant to Section 13 of Article VIII of the Constitution of the State of South Carolina and Section 4-1-170 of the Code will be dedicated to pay the principal and interest on the Bonds. The Bonds will be payable by Oconee County solely and exclusively out of Park Revenues received and retained by the County for the properties located within the Parks.

Notice is further given that any interested party may, within 20 days after the date of the publication of this notice but not afterwards, challenge the validity of the State Budget and Control Board's approval of the Projects, and the issuance of the Bonds by Oconee County to finance the Projects, by action *de novo* instituted in the Court of Common Pleas for Oconee County, South Carolina.

STATE BUDGET AND CONTROL BOARD

[Letterhead]

[Date]

Oconee County Council
Walhalla, South Carolina

[Purchaser]
[City], South Carolina

OCONEE COUNTY, SOUTH CAROLINA,
\$ _____ SPECIAL SOURCE REVENUE BOND,
SERIES 2010

We have acted as bond counsel to Oconee County, South Carolina (the "County"), in connection with the issuance of its \$ _____ Special Source Revenue Bond, Series 2010 (the "Bond"), dated March __, 2010. In such capacity, we have examined such laws and such certified proceedings, certifications, and other documents as we have deemed necessary to render this opinion.

The Bond is issued pursuant to and in accordance with the Constitution and statutes of the State of South Carolina, including particularly S.C. Code Ann. §§ 4-1-175 and 4-29-68 (the "Act"); a General Bond Ordinance (the "General Bond Ordinance") enacted by the County Council of the County ("County Council"); and a First Supplemental Ordinance enacted by the County Council (the "Supplemental Ordinance"). The General Bond Ordinance and the First Supplemental Ordinance are sometimes collectively referred to as the "Ordinances."

Regarding questions of fact material to our opinion, we have relied on the representations of the County contained in the Ordinances, and in the certified proceedings and other certifications of public officials and others furnished to us, without undertaking to verify the same by independent investigation.

Based on the foregoing, and subject to the qualifications and considerations set forth herein, we are of the opinion that, under existing law:

1. The County is a validly existing political subdivision of the State of South Carolina with the power to enact the Ordinances, perform the agreements on its part contained therein and issue the Bond.
2. The Ordinances have been duly enacted by the County Council and constitute valid and binding obligations of the County enforceable against the County.
3. The Bond has been duly authorized and executed by the County, and is a valid and binding limited obligation of the County, payable solely from and secured equally and ratably by a pledge of (a) the Net Fee Payments remaining after the payment of Other Obligations and the application of any Special Source Credits, and (b) the Park Agreement

Revenues (collectively, the "Pledged Revenues") (as such terms are defined in the Ordinances). Under the General Bond Ordinance the County may, under certain terms and conditions, issue additional special source revenue bonds on a parity with the Bond.

4. Interest on the Bond is excludable from gross income for federal income tax purposes under existing laws, regulations, rulings and judicial decisions. Interest on the Bond is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations, nor is such interest taken into account in determining adjusted current earnings for the purpose of computing the alternative minimum tax imposed on certain corporations. The opinion set forth in the preceding sentence is subject to the condition that the County comply with all requirements of the Internal Revenue Code of 1986, as amended (the "Code") that must be satisfied subsequent to the issuance of the Bond in order that interest thereon be, or continue to be, excluded from gross income for federal income tax purposes. The County has covenanted to comply with the requirements. Failure to comply with certain of such requirements may cause the inclusion of interest on the Bond in gross income for federal income tax purposes to be retroactive to the date of issuance of the Bond. Except as expressed in paragraph 4 hereof, we express no opinion regarding other federal tax consequences arising with respect to the Bond.

5. Under the laws of the State of South Carolina, the Bond and the interest thereon are presently exempt from all taxation in the State, except estate or other transfer taxes. It should be noted, however, that Section 12-11-20, Code of Laws of South Carolina 1976, as amended, imposes upon every bank engaged in business in the State a fee or franchise tax computed on the entire net income of such bank, which includes interest paid on the Bond.

The rights of the owner of the Bond and the enforceability of the Bond and the Ordinances are limited by bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting creditors' rights generally, and by equitable principles, whether considered at law or in equity.

We express no opinion herein regarding the accuracy, adequacy, or completeness of any information provided by the County to [Purchaser], as purchaser of the Bond, or the moneys pledged to the repayment thereof.

The Bond is payable solely from Pledged Revenues received and retained by the County pursuant to certain Park Agreements between the County and various Partner Counties (as such terms are defined in the Ordinances). We have assumed with your permission that the Park Agreements have been duly entered into between the County and the various Partner Counties.

It is also to be understood that the constitutionality of the Act has not been judicially determined. In reviewing other statutes authorizing the State of South Carolina, its agencies and its political subdivisions to authorize a payment-in-lieu of taxes and to issue bonds, the Supreme Court of South Carolina has applied a public purpose standard expressly contained in, or inferred from, the South Carolina Constitution. Whether the application of a particular statute involves a proper public purpose has in past decisions of the Supreme Court involved subjective considerations which may be subject to change from time to time. In our opinion, the Act

sufficiently serves a public purpose to fulfill the requirements of the South Carolina Constitution. However, the limitations inherent in predicting decisions resting on policy matters are such that there can be no absolute assurance that a court may not reach an opposite conclusion.

This opinion is given as of the date hereof, and we assume no obligation or duty to revise, update or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention, or any changes in law that may hereafter occur. Furthermore, this opinion is limited to the matters expressly stated herein and no opinion may be inferred or implied beyond such matters. This opinion is based solely on, and expressly limited to, the facts as we presently know them. This opinion is furnished by us solely for the benefit of the purchaser of the Bond, may be relied upon by such purchasers only in connection with their purchase of the Bond and may not, without our express prior written consent, be used for any other purpose, published, quoted or relied upon by any other entity or entities or any person or persons.

Very truly yours,

OCONEE COUNTY, SOUTH CAROLINA

GENERAL BOND ORDINANCE

AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF SPECIAL SOURCE REVENUE BONDS OF OCONEE COUNTY, SOUTH CAROLINA; PRESCRIBING THE FORM OF BONDS; PROVIDING FOR THE ISSUANCE OF ADDITIONAL BONDS AND REFUNDING BONDS; LIMITING THE PAYMENT OF THE BONDS SOLELY TO THE PLEDGED REVENUES RECEIVED AND RETAINED BY THE COUNTY FROM THE PAYMENT OF FEES IN LIEU OF TAXES FROM CERTAIN JOINT COUNTY INDUSTRIAL AND BUSINESS PARKS AND PLEDGING THE PLEDGED REVENUES TO SUCH PAYMENT; CREATING CERTAIN FUNDS AND PROVIDING FOR PAYMENTS INTO SUCH FUNDS; AND MAKING OTHER COVENANTS AND AGREEMENTS IN CONNECTION WITH THE FOREGOING.

TABLE OF CONTENTS

(This Table of Contents for this Ordinance is for convenience of reference only and is not intended to define, limit or describe the scope or intent of any provision of this Ordinance).

	<u>Page</u>
ARTICLE I	
DEFINITIONS	
Definitions	1
ARTICLE II	
FINDINGS AND DETERMINATIONS	
Section 2.1. Findings and Determinations	10
ARTICLE III	
AUTHORIZATION AND ISSUANCE OF BONDS	
Section 3.1. Authorization of Bonds	12
Section 3.2. General Provisions for Issuance of Bonds	12
Section 3.3. Conditions for the Issuance of Bonds under this Ordinance other than Refunding Bonds	13
Section 3.4. Refunding Bonds	14
Section 3.5. Junior Bonds	15
ARTICLE IV	
THE BONDS	
Section 4.1. Execution	16
Section 4.2. Authentication	16
Section 4.3. Registration and Transfer of Bonds; Persons Treated as Holders	17
Section 4.4. Form of Bonds; Denominations; Medium of Payment	17
Section 4.5. Numbers, Date, and Payment Provisions	18
Section 4.6. Exchange of Bonds	18
Section 4.7. Regulations with Respect to Exchanges and Transfer	19
Section 4.8. Temporary Bonds	19
Section 4.9. Mutilated, Lost, Stolen or Destroyed Bonds	19

ARTICLE V
REDEMPTION OF BONDS

Section 5.1.	Redemption of Bonds	21
Section 5.2.	Selection of Bonds for Redemption.....	21
Section 5.3.	Notice of Redemption	21
Section 5.4.	Partial Redemption of Bond.....	22
Section 5.5.	Effect of Redemption.....	22
Section 5.6.	Cancellation	22

ARTICLE VI
ESTABLISHMENT OF FUNDS;
SECURITY FOR AND PAYMENT OF THE BONDS;
INVESTMENT OF MONEYS

Section 6.1.	Listing of Funds and Accounts	23
Section 6.2.	Disposition of Pledged Revenues	23
Section 6.3.	Security for and Payment of the Bonds	24
Section 6.4.	Accounting Methods.....	25
Section 6.5.	Revenue Fund	26
Section 6.6.	Debt Service Funds.....	26
Section 6.7.	Debt Service Reserve Funds	28
Section 6.8.	Infrastructure Projects Fund.....	30
Section 6.9.	Establishment of Construction Fund.....	30
Section 6.10.	Investment of Funds.....	30

ARTICLE VII
COVENANTS

Section 7.1.	To Pay Principal, Premium, and Interest on the Bonds	32
Section 7.2.	Joint County Industrial and Business Parks.....	32
Section 7.3.	Records, Accounts and Audits.....	32
Section 7.4.	Other Obligations and Special Source Credits.....	32

ARTICLE VIII
TRUSTEE; RESIGNATION OF TRUSTEE; LIABILITY OF
TRUSTEE FOR INVESTMENTS; CUSTODIANS

Section 8.1.	Trustee.....	33
Section 8.2.	Resignation of Trustee	36
Section 8.3.	Removal of Trustee.....	37
Section 8.4.	Successor Trustee.....	37
Section 8.5.	Custodians.....	38
Section 8.6.	Liability of Trustee for Investments	38
Section 8.7.	Trustee and Custodians Protected in Relying upon Resolutions	38

ARTICLE IX
AMENDMENTS OR SUPPLEMENTS TO THIS ORDINANCE

Section 9.1. Amendments or Supplements to this Ordinance.....39

ARTICLE X
EVENTS OF DEFAULT

Section 10.1. Events of Default41

ARTICLE XI
REMEDIES UPON EVENT OF DEFAULT

Section 11.1. Declaration of Principal and Interest as Due43
Section 11.2. Suits at Law or in Equity and Mandamus.....43
Section 11.3. Remedies Not Exclusive; Effect of Waiver of Default; Effect of
Abandonment of Proceedings or Adverse Determination44
Section 11.4. Restrictions on Bondholder's Action.....44
Section 11.5. Application of Revenues and Other Moneys After Default.....45

ARTICLE XII
DEFESANCE

Section 12.1. Defeasance47

ARTICLE XIII
MISCELLANEOUS

Section 13.1. Benefits of Ordinance Limited to the County, the Trustee and Holders
of the Bonds49
Section 13.2. Ordinance Binding Upon Successors or Assigns of the County.....49
Section 13.3. No Personal Liability49
Section 13.4. Effect of Saturdays, Sundays and Legal Holidays.....50
Section 13.5. Partial Invalidity.....50
Section 13.6. Law and Place of Enforcement of this Ordinance50
Section 13.7. Effect of Article and Section Headings and Table of Contents.....50
Section 13.8. Amendment to Multi-County Park Ordinances; Repeal of
Inconsistent Ordinances and Resolutions50
Section 13.9. Effectiveness of this Ordinance51
Section 13.10. Notices51
Section 13.11. Codification.....51

BE IT ORDAINED BY THE COUNTY COUNCIL OF OCONEE COUNTY, SOUTH CAROLINA, IN COUNCIL ASSEMBLED:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions. Unless the context shall clearly indicate some other meaning, the terms defined in this Section shall, for all purposes of this Ordinance and of any ordinance, resolution, certificate, opinion, instrument or other document herein or therein mentioned, have the meanings herein specified. Definitions shall be equally applicable to both the singular and plural forms of any of the terms herein defined and vice versa. The term:

"Accountant" shall mean an independent certified public accountant or a firm of independent certified public accountants selected by the County.

"Act" shall mean Sections 4-1-175 and 4-29-68 of the South Carolina Code, and all other statutory authorizations, now or hereinafter enacted, authorizing and enabling the County to provide for the issuance of the Bonds.

"Authorized County Representative" shall mean the person or persons at the time designated to act on behalf of the County for the purpose of performing any act under this Ordinance or any Supplemental Ordinance by a written certificate furnished to the Trustee or Custodian containing the specimen signature of such person or persons and signed on behalf of the County by the County Administrator.

"Bond" or "Bonds" shall mean any Bond, some of the Bonds or all of the Bonds issued under and pursuant to Article III hereof, including the Bond of 2010, excluding Junior Bonds.

"Bond Counsel" shall mean any attorney or firm of attorneys of nationally recognized standing in matters pertaining to the federal tax exemption of interest on obligations issued by states and political subdivisions, and duly admitted to practice law before the highest court of any state of the United States.

"Bondholders" or the term "Holders" or any similar term shall mean the registered owner or owners of any Outstanding Bond or Bonds.

"Bond of 2010" shall mean the not exceeding \$5,500,000 Oconee County, South Carolina, Special Source Revenue Bond, Series 2010, authorized under this Ordinance and the First Supplemental Ordinance.

"Bond Redemption Account" shall mean the account by that name created within each respective Debt Service Fund.

"Bond Year" shall mean the period from April 1 in any year to and including March 31 in the following year.

"Books of Registry" shall mean the registration books maintained by the Registrar in accordance with Section 4.3 hereof.

"Business Day" shall mean, except as otherwise provided with respect to a Series of Bonds in a Supplemental Ordinance, any day other than a Saturday, a Sunday or a day which shall be in the State or the state in which the principal corporate trust office of the Trustee is located a legal holiday or a day on which banking institutions are authorized by law or executive order to close.

"Construction Fund" shall mean any fund established with and maintained by the Custodian selected by the County and derived from certain of the proceeds of the sale of the Bonds and intended to defray the costs of all or a portion of any Project and to pay Costs of Acquisition and Construction (exclusive of any capitalized interest on Bonds which may be deposited in a Debt Service Fund) in connection therewith, as established in a Supplemental Ordinance authorizing the issuance of any Series of Bonds.

"Costs of Acquisition and Construction" shall mean, to the extent permitted by the Act, all costs (including, but not limited to, architectural and engineering fees) of designing, acquiring, constructing, improving, or expanding one or more Projects, including the Costs of Issuance and capitalized interest on Bonds, sums required to reimburse the County for payments previously made with respect to a Project, and funding of a Debt Service Reserve Fund. Costs of Acquisition and Construction shall include the payment of amounts due on bond anticipation notes, the proceeds of which were used for Costs of Acquisition and Construction.

"Costs of Issuance" shall mean all items of expense, directly or indirectly payable or reimbursable by or to the County and related to the authorization, sale and issuance of a Series of Bonds including, but not limited to, printing costs, costs of preparation and reproduction of documents, filing and recording fees, initial fees and charges of any Trustee, Custodian, Registrar or Paying Agent, legal fees and charges, auditing and accounting fees and charges, fees and disbursements of consultants and professionals, costs of credit ratings, fees and charges for preparation, execution, transportation and safekeeping of Bonds, costs and expenses of any refunding, premiums for insurance relating to the issuance of Bonds, financing charges, accrued interest with respect to the initial investment of proceeds of Bonds and any other costs, charges or fees in connection with the original issuance of Bonds.

"Council" shall mean the County Council of the County.

"County" shall mean Oconee County, South Carolina.

"Custodian" shall mean any bank, depository or trust company duly qualified and doing business within the State selected by the County as a depository of moneys or securities held in the Construction Fund. A Supplemental Ordinance may appoint the County Treasurer or other County designee as Custodian.

"Debt Service" shall mean, with respect to each Series of Bonds and with respect to any particular Bond Year, the aggregate of the amounts to be paid or set aside (or estimated to be required to be paid or set aside) in the applicable Debt Service Fund in such Bond Year for the payment of the principal of, redemption premium, if any, and interest (to the extent not capitalized or not payable from the proceeds of Bonds or investment earnings thereon) on such Series of Bonds. With respect to Variable Rate Indebtedness then Outstanding, interest thereon shall be calculated at the actual average rate of interest on the Variable Rate Indebtedness during the twelve (12) months immediately preceding the date of calculation (or such lesser period during which the Variable Rate Indebtedness has been Outstanding); provided, that for purposes of any prospective calculation, interest on Variable Rate Indebtedness shall be calculated at the lesser of (a) the 25-Bond Revenue Index published by *The Bond Buyer* (or if no longer published, any reasonably equivalent nationally recognized index published for the periods in question selected by the County) no more than two weeks prior to the date of calculation or (b) the maximum interest rate allowable on such Variable Rate Indebtedness. In the case of Bonds which have been or shall be issued as taxable obligations, for which the County has or shall be entitled to receive a payment that effectively reduces the County's debt service payment obligation therefor (including but not limited to Build America Bonds ("BABs") issuable pursuant to the authority of the American Recovery and Reinvestment Act of 2009 (the "ARRA")), the amount to be paid or set aside in the applicable Debt Service Fund in each Bond Year for such payment of Debt Service shall be reduced by the payment that the County has or shall be entitled to receive for such purpose.

"Debt Service Fund" shall mean the respective funds of that name established pursuant to Section 6.6 of this Ordinance and so designated pursuant to a Supplemental Ordinance to provide for the payment of the principal of and interest on the respective Series of Bonds issued pursuant to this Ordinance as the same respectively become due and payable.

"Debt Service Reserve Fund" shall mean the respective funds, if any, of that name established pursuant to the authorization of Section 6.7 of this Ordinance and so designated pursuant to a Supplemental Ordinance or this Ordinance to provide for the payment of the principal of and interest on the respective Series of Bonds issued pursuant to this Ordinance as the same respectively become due and payable.

"Default" or "Event of Default" shall mean any of those defaults specified in and defined by Section 10.1 hereof.

"Fec Payments" shall mean the payments made by owners or lessees (including payments made by any Person on behalf of such owner or lessee) of any property situated both in the County and in one or more of the Joint County Industrial and Business Parks. As provided in the Park Act, such Fec Payments are to be in an amount equivalent to the property taxes or other in-

licu-of payments that would have been due and payable with respect to such property except for the exemption from *ad valorem* taxation provided for in the Park Act.

"First Supplemental Ordinance" shall mean First Supplemental Ordinance authorizing the issuance of the Bond of 2010.

"Fiscal Year" shall mean the fiscal year of the County, initially being the period from July 1 in any year to and including June 30 of the following year.

"Government Obligations" shall mean, except as limited with respect to the funds and accounts relating to a Series of Bonds by a Supplemental Ordinance, any of the following to the extent now or hereafter permitted by the laws of the State:

(a) non-callable bonds, notes or direct obligations and general obligations of the United States;

(b) non-callable U.S. Treasury Certificates, Notes and Bonds (including State and Local Government Series - "SLGS");

(c) non-callable direct obligations of the U.S. Treasury which have been stripped by the U.S. Treasury;

(d) non-callable obligations issued by any agency or instrumentality of the United States of America which are backed by the full faith and credit of the United States; and

(e) prerefunded municipal bonds which are rated "Aaa" by Moody's or "AAA" by S&P.

"Highpointe/PointeWest Park" shall mean the Joint County Industrial and Business Park established pursuant to Highpointe/PointeWest Park Agreement.

"Highpointe/PointeWest Park Agreement" shall mean that certain Agreement for Development of Joint County Industrial and Business Park (Highpointe/PointeWest) between the County and Pickens County.

"Infrastructure Projects Fund" shall mean the fund of that name established pursuant to Section 6.8 hereof.

"Interest Account" shall mean the account by that name created within each respective Debt Service Fund.

"Interest Payment Date" shall mean the respective interest payment dates for a Series of Bonds as determined by a Supplemental Ordinance.

"Joint County Industrial and Business Park" shall mean any present or future joint county industrial and business park established by the County and a Partner County pursuant to (1) a Park Agreement, and (2) the Park Act.

"Junior Bonds" shall mean either (a) bonds or bond anticipation notes secured by a pledge of Pledged Revenues junior and subordinate in all respects to the pledge securing the Bonds, or (b) any other form of indebtedness secured by Pledged Revenues after provision has been made for all payments required to be made with respect to the Bonds, which bonds or indebtedness may be authorized by an ordinance of Council which is not supplemental to this Ordinance.

"Maximum Debt Service" shall mean the highest aggregate principal and interest requirements (to the extent not paid from the proceeds of Bonds or investment earnings thereon) on the Bonds then Outstanding during any then current or future Bond Year. In the case of determining the Maximum Debt Service for purposes of Section 3.3 of this Ordinance, interest on Variable Rate Indebtedness shall be calculated at the lesser of (a) the 25-Bond Revenue Index published by *The Bond Buyer* (or if no longer published, any reasonably equivalent nationally recognized index published for the periods in question selected by the County) no more than two weeks prior to the date of calculation or (b) the maximum interest rate allowable on such Variable Rate Indebtedness. In the case of Bonds which have been or shall be issued as taxable obligations, for which the County has or shall be entitled to receive a payment that effectively reduces the County's debt service payment obligation therefor (including but not limited to BABs issuable pursuant to the authority of the ARRA (as such terms are referred to in the definition of "Debt Service" above, the highest aggregate principal and interest requirements for such Bonds during any Bond Year shall be reduced by the payment that the County has or shall be entitled to receive therefor.

"Moody's" shall mean Moody's Investors Service, Inc., or its successors.

"Multi-County Fees" shall mean the Fee Payments paid by the County to a Partner County (on behalf of properties located in the County) pursuant to the terms of a Park Agreement.

"Multi-County Park Ordinances" shall mean, collectively, all ordinances of the County authorizing the execution and delivery of any Park Agreement between the County and any Partner County in order to establish any Joint County Industrial and Business Park.

"Net Fee Payments" shall mean: (a) with respect to any property located in the Highpointe/PointeWest Park, 100% of the Fee Payments received and retained by the County under the terms of the Highpointe/PointeWest Park Agreement and the Multi-County Park Ordinance that approved the same, calculated after payment of any Multi-County Fees due to the Partner County under the terms of the Highpointe/PointeWest Park Agreement; and (b) with respect to any property located in the County and in any Joint County Industrial and Business Park *except for any property located in the Highpointe/PointeWest Park*, the product of fifteen percent (15%) of the Fee Payments received and retained by the County under the terms of the applicable Park Agreements and the Multi-County Park Ordinances, calculated prior to the payment of any Other Obligations and Special Source Credits and after payment of any Multi-County Fees due to a Partner County under the terms of the respective Park Agreements.

"Other Obligations" shall mean any special source revenue bonds (excluding Bonds and Junior Bonds issued pursuant to this Ordinance) heretofore or hereafter issued by the County

pursuant to the Act and payable from payments made by owners or lessees of any property situated both in the County and in one or more of the Joint County Industrial and Business Parks.

"Outstanding", when used with respect to any Bond, shall have the construction given to such word in Article XII hereof; i.e., a Bond shall not be Outstanding if such Bond is not, or would not be at the time, deemed to be Outstanding by reason of the operation and effect of said Article XII.

"Park Act" shall mean Section 4-1-170 of the South Carolina Code, Article VIII, Section 13 of the Constitution of the State, as amended, and all other statutory or constitutional authorizations, now or hereinafter enacted, authorizing and enabling the existence of Joint County Industrial and Business Parks.

"Park Agreement" shall mean any current or future agreement for the development of a Joint County Industrial and Business Park between the County and a Partner County, and any and all amendments or supplements thereto, pursuant to the Park Act. As of the date of enactment of this Ordinance, the Park Agreements are:

(1) Agreement for Development for Joint County Industrial Park between the County and Pickens County, South Carolina, dated January 15, 2007, as amended from time to time;

(2) Agreement for Development for Joint County Industrial Park between the County and Williamsburg County, South Carolina, dated July 25, 1994, as amended from time to time;

(3) Agreement for Development for Joint County Industrial Park between the County and Pickens County, South Carolina, dated May 4, 1998, as amended from time to time; and

(3) Agreement for Development of Joint County Industrial and Business Park (Highpointe/PointeWest) between the County and Pickens County, as amended from time to time.

"Park Agreement Revenues" shall mean any revenues or fees received and retained by the County from a Partner County pursuant to a Park Agreement.

"Partner County" shall mean any other county of the State with which the County has agreed or agrees to create a Joint County Industrial and Business Park pursuant to a Park Agreement and the Park Act.

"Paying Agent" shall mean for each Series of Bonds the respective paying agent or paying agents appointed pursuant to the proceedings authorizing such Bonds.

"Permitted Investments" shall mean, except as limited with respect to the funds and accounts relating to a Series of Bonds by a Supplemental Ordinance, (a) any one or more of the investments now or hereafter permitted by Section 6-5-10 or Section 11-1-60 of the South Carolina Code, and in effect from time to time, or any authorization relating to the investment of

funds hereunder; and (b) the South Carolina Pooled Investment Fund or similar State-administered pool investment fund.

"Person" or words importing "persons" means firms, associations, partnerships (including without limitation, general and limited partnerships), joint ventures, societies, estates, trusts, corporations, other legal entities and natural persons.

"Pledged Revenues" shall mean the sum of: (1) the Net Fee Payments remaining after the payment of Other Obligations and the application of Special Source Credits; and (2) the Park Agreement Revenues.

"Principal Account" shall mean the account by that name created within each respective Debt Service Fund.

"Principal Payment Date" shall mean the respective principal payment dates for a Series of Bonds as determined by a Supplemental Ordinance.

"Project" or "Projects" shall mean (a) infrastructure serving the County or a project; (b) improved or unimproved real estate used in the operation of a manufacturing or commercial enterprise; and (c) such other purposes which may now or hereafter be permitted under the Act and for which special source revenue bonds may be issued. A Project may be located outside of the boundaries of a Joint County Industrial and Business Park.

"Record Date" shall mean, with respect to any Series of Bonds, the fifteenth (15th) day (whether or not a Business Day) of the calendar month immediately preceding an Interest Payment Date or such other day as may be provided in the Supplemental Ordinance authorizing the issuance of such Series of Bonds.

"Registrar" shall mean, for each Series of Bonds, the registrar appointed pursuant to the proceedings authorizing such Bonds.

"Reserve Fund Requirement" shall mean, as of the date of calculation, the debt service reserve fund requirement, if any, established pursuant to a Supplemental Ordinance authorizing the issuance of a Series of Bonds.

"Revenue Fund" shall mean the fund of that name established pursuant to Section 6.5 of this Ordinance.

"S&P" shall mean Standard & Poor's Credit Markets Service, a Division of The McGraw-Hill Companies, Inc., or its successors.

"Series" or "Series of Bonds" or "Bonds of Series" shall mean all Bonds designated as being of the same series issued and delivered on original issuance in a simultaneous transaction, and any Bonds thereafter delivered in lieu thereof or in substitution therefor pursuant to this Ordinance.

"Special Source Credit" shall mean any credit or payment heretofore or hereafter granted by the County against any fee payment pursuant to Section 4-1-175, Section 4-12-30(K)(3),

Section 4-29-67(L)(3), or Section 12-44-70 of the South Carolina Code or any successor or similar provision of State law to any entity having property within any Joint County Industrial and Business Park.

"South Carolina Code" shall mean the South Carolina Code of Laws 1976, as amended.

"State" shall mean the State of South Carolina.

"Supplemental Ordinance" shall mean any ordinance enacted by the Council providing for the issuance of a Bond or Bonds hereunder, including the First Supplemental Ordinance, and any ordinance enacted by the Council pursuant to and in compliance with the provisions of Article IX hereof amending or supplementing the provisions of this Ordinance or any Supplemental Ordinance.

"Term Bond" shall mean any Bond designated by the Supplemental Ordinance providing for its issuance as being subject to retirement or redemption from moneys credited to the applicable Bond Redemption Account as sinking fund installments.

"Trustee" shall mean Branch Banking and Trust Company, and any successor Trustee appointed in accordance with Article VIII hereof.

"Variable Rate Indebtedness" shall mean indebtedness in the form of Bonds, the interest rate on which is not established at a fixed or constant rate at the time such indebtedness is incurred.

[Remainder of page intentionally left blank]

ARTICLE II

FINDINGS AND DETERMINATIONS

Section 2.1. Findings and Determinations. The Council hereby finds and determines:

A. The County is a political subdivision of the State of South Carolina and as such has all powers granted to counties by the Constitution and general laws of the State.

B. Article X, Section 14, of the Constitution of the State of South Carolina, 1895, as amended, provides that indebtedness payable solely from a special source, which source does not involve revenues from any tax or license, may be issued by a county upon such terms and conditions as the General Assembly may prescribe by general law.

C. The Act empowers a county that receives and retains revenues pursuant to the Park Act to issue special source revenue bonds secured by and payable from all or a part of such revenues, subject to certain terms and conditions as provided therein, for the purpose of defraying a portion of the cost of designing, acquiring, constructing, improving or expanding infrastructure serving the County or a project, and improved or unimproved real estate used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the County and the Cost of Issuance of any Series of Bonds.

D. In Horry County School District v. Horry County, 552 S.E.2d 737 (S.C. 2001), the Supreme Court of South Carolina upheld the constitutionality of the Park Act, and held that counties that receive and retain revenues from joint county industrial and business parks created pursuant to the Park Act have the discretionary authority to allocate such revenues to the extent permitted by the Park Act.

E. The County has determined that there is a need to design, acquire, construct, improve and expand infrastructure serving the County or particular projects, from time to time, and improved or unimproved real estate used in the operation of manufacturing or commercial enterprises in order to enhance the economic development of the County.

F. The Bonds are to be issued under and pursuant to the provisions of the Act and the Park Act, and are to be secured by and payable solely from the Pledged Revenues.

G. The County has entered into various Park Agreements with Partner Counties to develop Joint County Industrial and Business Parks, and may continue to do so. Further, the County may continue to designate property located within the County as part of any existing Joint County Industrial and Business Park. Pursuant to the Park Agreements and the Multi County Park Ordinances, the County receives and retains a portion of the Fee Payments paid by owners or lessors of properties physically located within the Joint County Industrial and Business Parks. The County hereby finds and determines that it is proper to utilize such moneys received and retained by the County to finance the Costs of Acquisition and Construction of the Projects and to secure payment of the Bonds provided for hereunder and in any Supplemental Ordinance.

H. The County hereby finds and determines that it is necessary and proper to direct that the following amounts be deposited into the Revenue Fund established herein and be made available to pay for costs of infrastructure for economic development in the County, including payment of Debt Service on Bonds: (a) 100% of the Fee Payments received and retained by the County under the terms of the Highpointe/PointeWest Park Agreement and the Multi-County Park Ordinance that approved the same, calculated after payment of any Multi-County Fees due to the Partner County under the terms of the Highpointe/PointeWest Park Agreement; and (b) with respect to any property located in the County and in any Joint County Industrial and Business Park *except for any property located in the Highpointe/PointeWest Park*, the product of fifteen percent (15%) of the Fee Payments received and retained by the County under the terms of the applicable Park Agreements and the Multi-County Park Ordinances, calculated prior to the payment of any Other Obligations and Special Source Credits and after payment of any Multi-County Fees due to a Partner County under the terms of the respective Park Agreements.

I. By the enactment of this Ordinance, the County intends to provide for the issuance of special source revenue bonds at the time and on the terms and conditions set forth in this Ordinance and Supplemental Ordinances hereto.

[Remainder of page intentionally left blank]

ARTICLE III

AUTHORIZATION AND ISSUANCE OF BONDS

Section 3.1. Authorization of Bonds. There is hereby authorized to be issued Bonds of the County to be designated "Oconee County, South Carolina, Special Source Revenue Bonds" or such other designations as may be provided in the Supplemental Ordinance authorizing such Bonds, which Bonds may be issued pursuant to this Ordinance and in accordance with the terms, conditions and limitations set forth herein; in Series; and in such amounts and from time to time as the County may deem to be necessary or advisable for any corporate purpose of the County for which Bonds may be issued under this Ordinance and the Act.

Section 3.2. General Provisions for Issuance of Bonds.

(a) The Bonds shall be issued in Series by means of Supplemental Ordinances enacted by the Council in accordance with the provisions of this Article and Article IX hereof. Each Supplemental Ordinance shall designate the Bonds provided thereby with an appropriate Series designation and with such further particular designations, if any, as the County deems appropriate. Each Supplemental Ordinance shall, unless or except as is otherwise set forth herein, also specify: (i) the authorized principal amount and designation of such Series of Bonds; (ii) the purpose or purposes for which the Bonds of such Series are being issued, which shall be one or more of the purposes set forth in Sections 3.3 or 3.4 hereof; (iii) if the Bonds of the Series are being issued for a purpose specified in Section 3.3 hereof, the Project(s) for which such Bonds are being issued; (iv) an estimate of the Costs of Acquisition and Construction for any Project(s), if any, to be financed by such Series of Bonds; (v) the date or dates of the Bonds of the Series; (vi) the maturity date or dates of the Bonds of the Series and the sinking fund installment amounts and due dates for the Term Bonds of the Series, if any; (vii) the interest rate or rates of the Bonds of such Series, or the manner of determining such rate or rates, the initial Interest Payment Date therefor, and the subsequent Interest Payment Dates; (viii) the denominations of (if other than as provided in this Ordinance), and manner of numbering and lettering, the Bonds of such Series; (ix) the redemption premium or premiums, if any, or the redemption price or prices to be paid upon the redemption of the Bonds of such Series, the period or periods, if any, during which such premiums or prices shall be payable, and the terms and conditions, if any, of such redemption; (x) the place or places of payment of the Bonds of the Series and interest thereon, and the Paying Agent and Registrar therefor and any Custodian of the funds and accounts created with respect thereto; (xi) the provisions for the sale or other disposition of the Bonds of the Series and the use, application and investment, if any, of the proceeds of such sale or other disposition, which use, application and investment shall not be inconsistent or in conflict with the provisions hereof; (xii) whether such Series of Bonds will be subject to a Reserve Fund Requirement and the manner of satisfaction of such Reserve Fund Requirement; (xiii) any other provisions which may be required to be inserted therein by other provisions of this Ordinance; and (xiv) any other necessary or desirable provisions not inconsistent or in conflict with the provisions of this Ordinance.

(b) Bonds of a Series may be executed and delivered to the Registrar by the County and authenticated and delivered to the County or, upon its order, upon compliance with Section 3.3 or Section 3.4 hereof.

Bonds issued upon compliance with this Section 3.2 and Section 3.3 or Section 3.4 hereof shall be issued on a parity with the pledge of and lien upon the Pledged Revenues inter sese, but not with respect to the particular Debt Service Fund or Debt Service Reserve Fund created for the benefit of the Holders of the Bonds of a Series, notwithstanding, that they may be in different form, and bear different dates, interest rates, number, date of issuance or date of execution or are payable at different times. In all such instances, the pledge of Pledged Revenues made hereunder, and the covenants and remedies hereby granted, shall be applicable and available to the Holders of such Bonds.

Section 3.3. Conditions for the Issuance of Bonds under this Ordinance Other than Refunding Bonds.

Any time and from time to time, one or more Series of Bonds (exclusive of refunding Bonds) may be issued for such purposes as may be permitted by the Act upon compliance with the provisions of Section 3.2 hereof and this Section 3.3 in such principal amounts as may be determined by the Council for the purpose of paying all or part of the Costs of Acquisition and Construction of one or more Projects upon compliance with the following conditions:

A. There shall be executed and filed with the Trustee a certificate of an Authorized County Representative stating (i) either (a) that no Default exists in the payment of the principal of, premium, if any, or interest on any Bonds or Junior Bonds, and all mandatory sinking fund redemptions, if any, required to have been made shall have been made, or (b) that the application of the proceeds of sale of the Series of Bonds to be issued as required by the Supplemental Ordinance authorizing their issuance will cure any such Default or permit such redemptions; and (ii) either (a) that to the best of his or her knowledge, the County is not in Default in the performance of any other of its covenants and agreements contained in this Ordinance, or (b) setting forth the circumstances of each such Default known to him or her.

B. If a certificate filed pursuant to part (A) of this Section 3.3 should disclose a Default or Defaults hereunder, there shall be filed with the County an opinion of Bond Counsel that, in the case of any Default disclosed in a certificate filed pursuant to part (A) of this Section 3.3, each such Default does not deprive the Bondholders of the security afforded by this Ordinance in any material aspect.

C. For the issuance of Bonds (other than the Bond of 2010 issued under this Ordinance and the First Supplemental Ordinance) to finance the Costs of Acquisition and Construction, or a portion thereof, of any Project, there shall be delivered a certificate of an Authorized County Representative certifying that the amount of the Pledged Revenues received by the County during the Fiscal Year preceding the issuance of any Series of Bonds is not less than 120% of the Maximum Debt Service on Bonds then Outstanding and the Bonds then proposed to be issued.

D. Such Bonds shall be issued to secure funds to defray the Costs of Acquisition and Construction of a Project, or to refund Junior Bonds, or any notes, bonds, or other obligations issued to finance or to aid in financing the acquisition or construction of a Project.

E. The Supplemental Ordinance may provide for a deposit into the Debt Service Reserve Fund with respect to such Series of Bonds of cash or securities or an insurance policy, surety bond or letter of credit, as provided in Section 6.7 hereof (inclusive of any proceeds of such Series of Bonds to be deposited in the applicable Debt Service Reserve Fund) having an aggregate value not less than the Reserve Fund Requirement, if any, with respect to such Series of Bonds.

Section 3.4. Refunding Bonds. Without complying with the provisions of Section 3.3 hereof except as otherwise provided herein, the County by means of a Supplemental Ordinance enacted in compliance with the provisions of the Act and any other statutory provisions authorizing the issuance of revenue refunding bonds, including advance refunding bonds, may issue hereunder refunding Bonds as follows:

A. Bonds may be issued for the purpose of refunding (including by purchase) at any time within one year prior to maturity or prior to any sinking fund installment due date, the Bonds maturing on such date (or an amount of such Bonds subject to redemption from such sinking fund installments not in excess of the amount of such Bonds required to be redeemed on such due date) for the payment of which sufficient Pledged Revenues are not available. Any Bonds issued for such purpose shall mature (or sinking fund installments therefor shall commence) not earlier than the latest stated maturity of the Bonds not then refunded to be Outstanding after such refunding; or

B. Bonds may be issued at any time for the purpose of refunding (including by purchase) other Bonds, including amounts to pay principal, redemption premium and interest to the date of redemption (or purchase) of the refunded Bonds and the Costs of Issuance and the funding of a Debt Service Reserve Fund thereunder; provided that (i) the aggregate Debt Service on all Bonds to be Outstanding after the issuance of the proposed Series of refunding Bonds shall not be greater than would have been the aggregate Debt Service of all Bonds not then refunded and the Bonds to be refunded; or (ii) the requirements of parts (A), (B), (C) and (E) of Section 3.3 hereof are met with respect to the refunding Series.

Section 3.5. Junior Bonds. The County may at any time issue Junior Bonds in such amount as it may from time to time determine, payable from the Pledged Revenues, provided that such Junior Bonds are issued to secure funds to defray the Costs of Acquisition and Construction or Costs of Issuance for Projects, or to refund Bonds, Junior Bonds, or any notes, bonds, or other evidences of indebtedness issued to finance or to aid in financing the acquisition or construction of the Projects, and provided further that the pledge of and lien on Pledged Revenues securing Junior Bonds shall at all times be subordinate and inferior to the pledges of and lien on Pledged Revenues securing the Bonds.

[Remainder of page intentionally left blank]

ARTICLE IV

THE BONDS

Section 4.1. Execution. Unless or except as is otherwise set forth in the Supplemental Ordinance providing for the issuance of a Series of Bonds, the Bonds shall be executed on behalf of the County by the Chairman of the County Council by his or her manual or facsimile signature and the corporate seal of the County or a facsimile thereof shall be impressed or reproduced thereon and attested by the Clerk to the County Council by his or her manual or facsimile signature.

In case any officer whose signature or facsimile signature shall appear on the Bonds shall cease to be such officer before the delivery of such Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, as if he had remained in office until delivery.

Section 4.2. Authentication. Unless or except as is otherwise set forth in the Supplemental Ordinance providing for the issuance of a Series of Bonds, upon compliance with the provisions of Sections 3.2, 3.3 or 3.4 hereof, and upon the order of the County, the Registrar shall authenticate Bonds authorized to be issued hereunder. Only such Bonds as shall have endorsed thereon a certificate of authentication, duly executed manually by the Registrar shall be entitled to any right or benefit under this Ordinance. No Bond shall be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly executed by the Registrar, and such executed certificate of the Registrar upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered. The Registrar's certificate of authentication on any Bond shall be deemed to have been executed by it if signed by an authorized officer of the Registrar, but it shall not be necessary that the same person sign the certificate of authentication on all of the Bonds issued hereunder or on all of the Bonds of a particular Series. The Registrar's certificate of authentication shall be in substantially the following form:

FORM OF REGISTRAR'S CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds described in the within-mentioned Ordinance of Oconee County, South Carolina.

Registrar

Dated: _____

By: _____
Authorized Officer

Section 4.3. Registration and Transfer of Bonds; Persons Treated as Holders. Unless and except as is otherwise set forth in the Supplemental Ordinance providing for the issuance of a Series of Bonds, each Bond shall be fully registered and transferable only upon the registration books (the "Books of Registry") of the County, which shall be kept for that purpose at the office of the Registrar, by the Holder thereof or by his attorney, duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the Holder or his or her duly authorized attorney with such signature guaranteed by a participant in the Securities Transfer Agents in Medallion Program ("STAMP") or similar program. Upon the transfer of any Bond, the County shall issue, subject to the provisions of Section 4.6 hereof, in the name of the transferee, a new Bond or Bonds of the same series and of the same aggregate principal amount, interest rate and maturity as the unpaid principal amount of the surrendered Bond.

Any Bondholder requesting any transfer shall pay any tax or other governmental charge required to be paid with respect thereto. As to any Bond, the person in whose name the same shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes and payment of or on account of the principal, redemption premium, if any, and interest on any Bond shall be made only to or upon the order of the Bondholder thereof, or his duly authorized attorney, and neither the County nor the Registrar, shall be affected by any notice to the contrary, but such registration may be changed as herein provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

Section 4.4. Form of Bonds; Denominations; Medium of Payment. Unless or except as is otherwise provided in the Supplemental Ordinance authorizing their issuance, the Bonds of each Series: (a) shall be in fully registered form without coupons, provided, such Bonds may be issued in book-entry form; (b) shall be issued in denominations of \$5,000, or any integral multiple thereof, provided that, upon partial redemption of a Bond requiring surrender thereof and the issuance of a new Bond, such new Bond may be in the denomination of the unredeemed balance; and (c) shall be payable with respect to principal, interest, and premium, if any, in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

Section 4.5. Numbers, Date, and Payment Provisions.

(a) The Bonds shall be numbered and designated in such manner as the County, with the concurrence of the Registrar, shall determine. Each Bond of a Series shall bear interest from the Interest Payment Date immediately preceding the date of its authentication, unless authentication shall be upon an Interest Payment Date, in which case it shall bear interest from its authentication, or unless authentication shall precede the first Interest Payment Date for such Bond, in which case it shall bear interest as otherwise provided in the Supplemental Ordinance authorizing its issuance, provided, however, that if the date of authentication of any Bond of any Series is after a Record Date and before the corresponding Interest Payment Date therefor, such Bond shall bear interest from such succeeding Interest Payment Date; notwithstanding the foregoing, if at the time of authentication of any Bond any interest on such Bond is in default, such Bond shall bear interest from the date to which interest on such Bond has been paid or if no interest has been paid, such Bond shall bear interest from the date of delivery thereof or from its dated date, or as otherwise provided in the Supplemental Ordinance authorizing the issuance of such Bonds.

(b) The principal of and redemption premium, if any, on the Bonds shall be payable when due in lawful money of the United States of America upon presentation and surrender of such Bonds at the principal office of the Paying Agent described in the Supplemental Ordinance authorizing the issuance of such Bonds. Except as otherwise provided in a Supplemental Ordinance, payment of interest on Bonds shall be made by check or draft drawn upon the Paying Agent and mailed to the Holder at his or her address as it appears upon the Books of Registry. The Paying Agent shall maintain a record of the amount and date of any payment of principal and/or interest on the Bonds (whether at the maturity date or the redemption date prior to the maturity or upon the maturity thereof by declaration or otherwise).

Section 4.6. Exchange of Bonds. Unless or except as is otherwise provided in the Supplemental Ordinance authorizing their issuance, Bonds, upon surrender thereof at the office of the Registrar with a written instrument of transfer satisfactory to the Registrar, duly executed by the Bondholder or his duly authorized attorney with such signature guaranteed by a participant in STAMP or similar program, may, at the option of the Bondholder thereof, and upon payment by such Bondholder of any charges which the Registrar may make as provided in Section 4.7, be exchanged for a principal amount of Bonds of the same Series and maturity of any other authorized denomination equal to the unpaid principal amount of surrendered Bonds.

Section 4.7. Regulations with Respect to Exchanges and Transfer. In all cases in which the privilege of exchanging or transferring Bonds is exercised, the County shall execute and the Registrar shall authenticate and deliver Bonds in accordance with the provisions of this Ordinance or such Supplemental Ordinance authorizing the issuance thereof. All Bonds surrendered in any such exchanges or transfers shall forthwith be canceled by the Registrar. There shall be no charge to the Bondholder for such exchange or transfer of Bonds except that the Registrar may make a charge sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such exchange or transfer. Neither the County nor the Registrar shall be required (a) to exchange or transfer Bonds (i) from the Record Date to the succeeding Interest Payment Date or (ii) for a period of 15 days following any selection of Bonds to be redeemed or thereafter until after the first publication or mailing of any notice of redemption, or (b) to transfer any Bonds called for redemption.

Section 4.8. Temporary Bonds. Any Series of Bonds may be initially issued in temporary form, exchangeable for definitive Bonds to be delivered as soon as practicable and subject to the agreement of the County and the purchaser thereof. The temporary Bonds may be printed, lithographed or typewritten, shall be of such denominations as may be determined by the County, shall be without coupons, and may contain such reference to any of the provisions of this Ordinance as may be appropriate. Every temporary Bond shall be executed by the County upon the same conditions and in substantially the same manner as the definitive Bonds. If the County issues temporary Bonds, it will execute and furnish definitive Bonds without delay; and thereupon the temporary Bonds shall be surrendered for cancellation at the principal office of the Registrar, and the Registrar shall deliver and exchange for such temporary Bonds an equal, aggregate principal amount of definitive Bonds of like aggregate principal amount and in authorized denominations of the same Series, maturity or maturities and interest rate or rates. Until so exchanged, the temporary Bonds shall be entitled to the same benefits under this Ordinance as definitive Bonds under this Ordinance.

Section 4.9. Mutilated, Lost, Stolen or Destroyed Bonds. In case any Bond shall at any time become mutilated in whole or in part, or be lost, stolen or destroyed, or be so defaced as to impair the value thereof to the Holder, the County shall execute and the Registrar shall authenticate and deliver at the principal office of the Registrar, or send by registered mail to the Holder thereof at his request, risk and expense a new Bond of the same series, interest rate and maturity and of like tenor and effect in exchange or substitution for and upon the surrender for cancellation of such defaced, mutilated or partly destroyed Bond, or in lieu of or in substitution for such lost, stolen or destroyed Bond. In any such event, the applicant for the issuance of a substitute Bond shall furnish the County and the Registrar (a) evidence or proof satisfactory to the County and the Registrar of the loss, destruction, mutilation, defacement or theft of the original Bond, and (b) of the ownership thereof, and (c) such security and indemnity as may be required by the laws of the State or such greater amount as may be required by the County and the Registrar. Any duplicate Bond issued under the provisions of this Section in exchange and substitution for any defaced, mutilated or partly destroyed Bond or in substitution for any allegedly lost, stolen or wholly destroyed Bond shall be entitled to the identical benefits under this Ordinance or any Supplemental Ordinance as was the original Bond in lieu of which such duplicate Bond is issued, and shall be entitled to equal and proportionate benefits with all the other Bonds of the same series issued hereunder. Neither the County nor the Registrar nor any Paying Agent shall be required to treat both the original Bond and any duplicate Bond as being Outstanding for the purpose of determining the principal amount of Bonds which may be issued hereunder or for the purpose of determining any percentage of Bonds Outstanding hereunder, but both the original and duplicate Bond shall be treated as one and the same. In the event any such mutilated, lost, stolen or destroyed Bond shall have matured, instead of issuing a duplicate Bond the County may pay the same. All expenses necessary for the providing of any duplicate Bond shall be borne by the applicant therefor.

[Remainder of page intentionally left blank]

ARTICLE V

REDEMPTION OF BONDS

Section 5.1. Redemption of Bonds. The Bonds of a Series may be subject to redemption prior to their stated maturities upon such terms and conditions and at such dates and redemption price or prices or premium or premiums as shall be set forth in the Supplemental Ordinance providing for the issuance of such Bonds, and upon the further terms and conditions as are hereinafter set forth.

Section 5.2. Selection of Bonds for Redemption. In the event of the redemption at any time of only part of the Bonds of a Series, the Bonds to be redeemed shall be redeemed in such order as is set forth in the Supplemental Ordinance providing for the issuance of such Bonds. Unless otherwise provided by Supplemental Ordinance, if less than all of the Bonds of like maturity of any Series shall be called for prior redemption, the particular Bonds or portions of Bonds to be redeemed shall be selected at random by the Registrar in such manner as the Registrar in its discretion may deem fair and appropriate; provided, however, that the portion of any Bond of a denomination of more than \$5,000 to be redeemed shall be in the principal amount of \$5,000 or an integral multiple thereof, and that, in selecting portions of such Bonds for redemption, the Registrar shall treat each such Bond as representing that number of Bonds of \$5,000 denomination which is obtained by dividing the principal amount of such Bond by \$5,000.

Section 5.3. Notice of Redemption. Unless or except as otherwise provided in the Supplemental Ordinance authorizing their issuance, the provisions of this Section 5.3 apply to each Series of Bonds.

In the event any of the Bonds or portions thereof are called for redemption, the Registrar shall give notice, in the name of the County, of redemption of Bonds by first-class mail, postage prepaid, to the Holder thereof as shown on the Books of Registry of the County not less than 30 days and not more than 60 days prior to the date fixed for the redemption thereof. Such notice of redemption shall state: (a) the title of such Bonds to be redeemed, CUSIP numbers, date of issue, the Series designation (if any) thereof, the redemption date, the place or places of redemption and the redemption price or redemption premium, if any, payable upon such redemption; (b) if less than all such Bonds of a particular Series are to be redeemed, the distinctive number of such Bonds to be redeemed; (c) that the interest on such Bonds designated for redemption in such notice shall cease to accrue from and after such redemption date; and (d) that on such date there will become due and payable on each such Bond the principal amount thereof to be redeemed at the then applicable redemption price or redemption premium, if any, and the interest accrued on such principal amount to the redemption date. Any notice mailed as provided in this Section shall be conclusively presumed to have been duly given, when mailed, whether or not the Holder thereof receives the notice. The notice shall further state that if money for the redemption of all the Bonds being redeemed at that time is held by the Trustee on the redemption date, interest shall cease to accrue on such Bonds on and after the redemption date. The notice may further state that the redemption of the Bonds being called for redemption is conditioned upon the Trustee receiving on or before the redemption date of sufficient money for the redemption thereof.

Section 5.4. Partial Redemption of Bond. In the event that only part of a Bond shall be called for redemption or prepaid, payment of the amount to be redeemed or prepaid shall be made only upon surrender of such Bond to the Registrar. Upon surrender of such Bond, the County shall execute and the Registrar shall authenticate and deliver to the Holder thereof, at the principal office of the Registrar, or send to such Holder by registered mail at his request, risk and expense, a new fully executed Bond or Bonds, of authorized principal sums equal in aggregate principal amount to, and of the same Series, maturity and interest rate as, the unredeemed portion of the Bond surrendered.

Section 5.5. Effect of Redemption. If a Bond is subject by its terms to redemption prior to its stated maturity and has been duly called for redemption and notice of the redemption thereof has been duly given as hereinbefore provided and if moneys for the payment of such Bond at the then applicable redemption price or together with the then applicable redemption premium, if any, and the interest to accrue to the redemption date on such Bond are held for the purpose of such payment by the Trustee for the Series of Bonds of which such Bond is one, then such Bond so called for redemption shall, on the redemption date designated in such notice, become due and payable. Interest on the Bond so called for redemption shall cease to accrue.

Section 5.6. Cancellation. All Bonds which have been redeemed shall be canceled and either maintained or destroyed by the Registrar and shall not be reissued. A counterpart of the certificate of destruction evidencing such destruction shall be furnished by the Registrar to the County upon the request of the County.

[Remainder of page intentionally left blank]

ARTICLE VI

ESTABLISHMENT OF FUNDS; SECURITY FOR AND PAYMENT OF THE BONDS; INVESTMENT OF MONEYS

Section 6.1. Listing of Funds and Accounts. The following are the funds and accounts created and established by this Ordinance:

- (i) Revenue Fund to be held by the County or a bank or other financial institution designated from time to time by the County.
- (ii) Debt Service Fund for each Series of Bonds to be held by the Trustee, including, except as provided in a Supplemental Ordinance, an Interest Account, a Principal Account and a Bond Redemption Account.
- (iii) Debt Service Reserve Fund for each Series of Bonds, if any, to be held by the Trustee.
- (iv) Infrastructure Projects Fund each to be held by a bank or other financial institution designated from time to time by the County.
- (v) Construction Fund for each Series of Bonds, if any, to be held by a Custodian designated by the County.

One or more accounts may, by direction of the County or by the terms of a Supplemental Ordinance, be established within any of the above funds. It is intended by this Ordinance that the funds and accounts referred to in this Article (other than the Construction Fund) shall remain in existence for so long a time as any sum remains due and payable by way of principal of and interest on the Bonds, and that deposits and withdrawals therefrom be made in the manner herein prescribed and in the order of priority hereinafter set forth in Section 6.2 hereof. Upon the issuance of any Junior Bonds, the Trustee shall then establish in a Supplemental Ordinance a Junior Bond Debt Service Fund. Any debt service due on Junior Bonds shall be paid after all payments have been made with respect to the Debt Service Fund and Debt Service Reserve Fund.

Section 6.2. Disposition of Pledged Revenues. So long as any Bonds are Outstanding, the Pledged Revenues shall be applied at the times, in the amounts and for the purposes as provided or permitted by this Ordinance, and in the following order of priority:

First, provision shall be made for the payment of the principal of and interest on any Bonds then Outstanding, and there shall be transferred into the respective Debt Service Funds the amounts required by this Ordinance or any Supplemental Ordinance;

Second, there shall be transferred into the respective Debt Service Reserve Funds, if established, the amounts (including any payments required under the terms of any surety bond, insurance policy or letter of credit applicable thereto) required by this Ordinance or any Supplemental Ordinance for any Bond issued hereunder or thereunder;

Third, provision shall be made for payment of interest on amounts advanced by the provider of any surety bond, line of credit, insurance policy or letter of credit as contemplated in Section 6.7 hereof;

Fourth, provision shall be made for the payment of any Junior Bonds;

Fifth, the remaining balance shall be transferred into the Infrastructure Projects Fund.

Section 6.3. Security for and Payment of the Bonds. Each Series of Bonds, together with the interest thereon, shall be payable solely from and secured equally and ratably by a pledge of the Pledged Revenues which shall be and hereby are irrevocably pledged to the payment of the principal of, redemption premium, if any, and interest on the Series of Bonds authorized by the Supplemental Ordinances; provided, however, that Junior Bonds shall be secured solely as provided in Section 3.5 hereto. Each Series of Bonds is further secured by the proceeds of such Series of Bonds deposited into the Construction Fund established to defray the Costs of Acquisition and Construction. A Series of Bonds issued to finance the acquisition of real or personal property may be additionally secured by a mortgage of that real or personal property, as specified in the Supplemental Ordinance.

To the extent that *ad valorem* taxes, prior to the conversion to Fee Payments pursuant to a Park Agreement, have been pledged to secure general obligation indebtedness of a political subdivision (which has taxing power within the applicable Joint County Industrial and Business Park) prior to the establishment of such Joint County Industrial and Business Park, such Fee Payments attributable to any real property and improvements thereon existing prior to the date of the Park Agreement shall first be applied, to the extent necessary, to the payment of such outstanding general obligation indebtedness.

To the extent such Fee Payments, prior to the date of enactment of this Ordinance, have been pledged or are hereafter pledged to the payment of Other Obligations or applied to any Special Source Credit, such Fee Payments shall first be applied, to the extent necessary, to the payment of such Other Obligations or applied to any Special Source Credit.

The Bonds, and the interest thereon are, (a) payable solely from all or a specifically described portion of the Pledged Revenues; (b) not secured by, or in any way entitled to, a pledge of the full faith, credit, or taxing power of the County; (c) not an indebtedness of the County within the meaning of any state constitutional provision or statutory limitation but are payable solely from a special source that does not include revenues from any tax or license; and (d) not a pecuniary liability of the County or a charge against the County's general credit or taxing power.

All funds held by the Trustee in the respective Debt Service Funds and Debt Service Reserve Funds are hereby pledged for the benefit of the respective Bondholders as security for the Bonds of the Series to which such funds relate. The Pledged Revenues shall be and hereby are irrevocably pledged to the payment of the principal of, redemption premium, if any, and

interest on the Bonds. This provision of this Section 6.3 shall not preclude the issuance of Junior Bonds if such Junior Bonds be issued in conformity with the provisions of Section 3.5 hereof, but the pledge herein made shall preclude the issuance of bonds payable from or secured by a pledge of or lien on the Pledged Revenues superior to that herein made to secure the Bonds.

The covenants and agreements herein set forth to be performed by the County shall be for the equal and proportionate benefit, security and protection of all Holders of the Bonds without preference, priority or distinction as to payment or security or otherwise (except as to maturity) of any of the Bonds for any reason or cause whatsoever, except as expressly provided by the pledging of Pledged Revenues herein or by Supplemental Ordinance for each of such series of Bonds. Except as aforesaid, all Bonds shall rank pari passu and shall be secured equally and ratably hereunder without discrimination or preference whatsoever.

Section 6.4. Accounting Methods. The designation of the Revenue Fund and the Infrastructure Projects Fund in and by this Ordinance shall not be construed to require the establishment of any completely independent, self-balancing funds as such term is commonly defined and used in governmental accounting, but rather is intended solely to constitute an earmarking of the Pledged Revenues for certain purposes and to establish certain priorities for application of such Pledged Revenues as herein provided.

The cash required to be accounted for in each of the foregoing funds established herein may be deposited in a single bank account, provided that adequate accounting records are maintained to reflect and control the restricted allocation of the cash in and deposited therein for the various purposes of such funds as provided herein.

Section 6.5. Revenue Fund. There is hereby established a Revenue Fund to be maintained in trust by the County in a bank or other financial institution designated, from time to time, by the County and into which shall be deposited all Pledged Revenues. Moneys in the Revenue Fund shall be used only in the manner specified in this Article VI and in the order of priority set forth in Section 6.2 hereof. Moneys held in the Revenue Fund may be invested, from time to time, in Permitted Investments; provided, however, that such Pledged Revenues in the Revenue Fund shall be made available to the Trustee on the fifth (5th) Business Day prior to each Interest Payment Date in amounts sufficient to make all transfers required to be made from the Revenue Fund by this Article VI and each Supplemental Ordinance.

Section 6.6. Debt Service Funds. There shall be established and maintained special funds of the County to be designated the Debt Service Fund for each Series of Bonds then Outstanding which shall be kept on deposit with the Trustee, and withdrawals therefrom shall be made for the purposes provided in this Ordinance or any Supplemental Ordinance. Each Debt Service Fund shall bear a separate series designation as may be necessary to distinguish such Debt Service Fund.

The respective Debt Service Funds are intended to provide for the payment of the principal of, redemption premium, if any, and interest on each Series of Bonds as the same respectively fall due. Payments into such funds shall be made in the manner prescribed by this Ordinance, and all moneys in the respective Debt Service Funds shall be used solely to pay the principal of, redemption premium, if any, and interest on the respective Series of Bonds, and for no other purpose, and withdrawals therefrom shall be made only to effect payment of the

principal of, redemption premium, if any, and interest on the respective Series of Bonds. Earnings on investments in the Debt Service Funds, including the accounts therein, shall be added to and become a part of such respective funds and the accounts therein.

There may be established in the respective Debt Service Funds from time to time a capitalized interest account to provide for the payment of interest on the Bonds of a particular Series as may be permitted hereunder. Any such account shall be created by a Supplemental Ordinance relating to the issuance of the Bonds of such Series. Any earnings from the investment of funds in the capitalized interest account not required to pay interest on the Bonds of any Series during the period for which interest on the Bonds of such Series is capitalized may be deposited in the Construction Fund created by the Supplemental Ordinance relating to such Bonds or, if such Construction Fund has been terminated or no such fund was created, such earnings shall be retained in the appropriate Debt Service Fund.

Unless and except as is otherwise set forth in a Supplemental Ordinance, not later than the fifth (5th) Business Day prior to each Interest Payment Date or Principal Payment Date, as the case may be, the County shall transfer or cause to be transferred to the Trustee from the Pledged Revenues in the Revenue Fund for deposit into the respective Debt Service Funds and ratably with respect to separate Series of Bonds for credit to the Interest Account, the Principal Account or the Bond Redemption Account, as the case may be, sufficient moneys so as to comply with the following provisions for the payment of the Bonds then Outstanding.

(a) There shall be established and maintained, for the purpose of paying the interest on the respective Series of Bonds as the same becomes due and payable, an Interest Account in the respective Debt Service Funds. In making any of the deposits to the Interest Account required by this paragraph (a), consideration shall be given to and allowance made for accrued interest received upon delivery of each Series of Bonds to the initial purchasers and for any other credits (including but not limited to capitalized interest with respect to each Series of Bonds) otherwise made to such Interest Account.

(b) There shall be established and maintained, for the purpose of paying the principal of the respective Series of Bonds as they mature, a Principal Account in the respective Debt Service Funds. In making any of the deposits to the Principal Account required by this paragraph (b), consideration shall be given to and allowance made for any other credits otherwise made to such Principal Account.

(c) There shall be established and maintained, in order to meet the specified sinking fund installment requirements of Term Bonds and to otherwise retire Term Bonds prior to maturity, a Bond Redemption Account in the respective Debt Service Fund. The Trustee shall apply the moneys credited to the Bond Redemption Account as sinking fund installments to the retirement of the Term Bonds of each respective Series by redemption in accordance with the Supplemental Ordinance providing for the issuance of such Series of Bonds, without further authorization or direction, on each date upon which a sinking fund installment is due with respect to the Term Bonds of such Series. The Trustee shall keep and retain accurate records of application of each deposit of funds under this paragraph (c). The Trustee shall give notice of all such redemptions in the name and on the behalf of the County in accordance with the provisions of Article V hercof. In making any of the deposits to the Bond Redemption Account required by this paragraph (c), consideration shall be given to and allowance made for any other credits otherwise made to such Bond Redemption Account.

(d) If, on the dates when the payments required by paragraphs (a), (b) and (c) of this Section are to be made, the aggregate of (i) the payments actually made pursuant to said paragraphs (a), (b) and (c), and (ii) the remaining payments to be made prior to the next succeeding date on which principal or interest, or both, as the case may be, will be due and payable, are less than the sum required to be transferred to a Debt Service Fund to effect the payment of the succeeding installment of principal or interest, or both, as the case may be, moneys in the applicable Debt Service Reserve Fund, if any, equal to such deficiency shall be added to the payment to be made pursuant to said paragraphs (a), (b) and (c).

Moneys in the respective Debt Service Funds shall be used and applied solely to the payment of the interest on and the retirement of the principal of and redemption premium, if any, on the respective Series of Bonds and shall be used and applied in accordance with the provisions of this Section 6.6 and this Ordinance. The moneys paid into the respective Debt Service Fund shall be held by the Trustee in trust solely for the purpose of paying the interest on and the retirement of the principal of and redemption premium, if any, on the respective Series of Bonds. Withdrawals from such funds shall be made by the Trustee in order to transfer such moneys to the Paying Agent for the respective Series of Bonds. Such withdrawals shall be made so that the necessary moneys shall be available to the Paying Agent not later than one Business Day prior to the day on which principal or interest or both, and redemption premium, if any, as the case may be, are payable on the Bonds.

Section 6.7. Debt Service Reserve Funds. A Supplemental Ordinance may provide for the establishment of a Debt Service Reserve Fund for any Series of Bonds. Each Debt Service Reserve Fund shall bear a separate Series designation as may be necessary to distinguish such Debt Service Reserve Fund and shall, subject to certain provisions of this Ordinance, be maintained in an amount equal to the applicable Reserve Fund Requirement, as determined pursuant to a Supplemental Ordinance, and in the manner determined pursuant to such Supplemental Ordinance, so long as the applicable Series of Bonds shall be Outstanding. Each such fund is intended to insure the timely payment of the principal of and interest on the applicable Series of Bonds and to provide for the redemption of such Series of Bonds prior to their stated maturities. The respective Debt Service Reserve Funds shall be kept on deposit with the Trustee, and withdrawals therefrom shall be made for the purposes provided in this Ordinance.

Moneys in each Debt Service Reserve Fund shall be used for the following purposes and for no other:

- (a) To prevent a Default in the payment of the principal of or interest on the applicable Series of Bonds, by reason of the fact that moneys in the applicable Debt Service Fund are insufficient for such purposes;
- (b) To pay the principal of, interest on, and redemption premium, if any, of the applicable Series of Bonds in the event that all Outstanding Bonds of such Series be redeemed as a whole;
- (c) To effect a partial redemption of the applicable Series of Bonds, provided that such redemption be undertaken in accordance with the provisions of this Ordinance permitting a partial redemption of the applicable Series of Bonds and the balance remaining in the applicable Debt Service Reserve Fund following such partial redemption shall not be less than the Reserve Fund Requirement; and
- (d) To effect the retirement of a Series of Bonds through purchase under the conditions herein prescribed.

Whenever the value (determined as of the valuation date and in accordance with the method specified in Section 6.10 hereof) of the cash and securities in the applicable Debt Service Reserve Fund shall exceed the Reserve Fund Requirement, such excess may, at the written direction of the County (i) be used to repurchase and retire the applicable Series of Bonds at prices not exceeding the call price first to become available or then prevailing, (ii) be deposited as the County deems advisable or (iii) be transferred to the Construction Fund during the period of construction or acquisition of a Project. Purchases of Bonds shall be effected by the County through the Trustee, and whenever Bonds shall have been purchased pursuant to this authorization, it shall be the duty of the Trustee to cancel and destroy such Bonds and to deliver certificates evidencing such act to the County.

Whenever the value (determined as of the valuation date and in accordance with the method specified in Section 6.10 hereof) of cash and securities in the respective Debt Service Reserve Fund shall be less than the applicable Reserve Fund Requirement, there shall be deposited from available Pledged Revenues into the applicable Debt Service Reserve Fund over the next succeeding twelve (12) months, successive equal monthly installments of the amount necessary to re-establish in the applicable Debt Service Reserve Fund its respective Reserve Fund Requirement.

In lieu of the deposit of moneys into the Debt Service Reserve Fund established with respect to any Series of Bonds to meet the Reserve Fund Requirement with respect to that Series, the County may cause to be credited a surety bond or an insurance policy payable to, or a letter of credit in favor of, the Trustee for the benefit of the Holders of the Bonds meeting the standard set forth in the Supplemental Ordinance authorizing that Series of Bonds, as the case may be. The amount of moneys required to be deposited to the Debt Service Reserve Fund shall be reduced by the amount of the surety bond, insurance policy, or letter of credit. The surety bond, insurance policy, or letter of credit shall be payable (upon the giving of notice as required thereunder) on any Interest Payment Date on which moneys will be required to be withdrawn

from the Debt Service Reserve Fund and applied to the payment of the principal of or interest on any Bonds of that Series but only to the extent that withdrawals cannot be made by amounts then credited to the Debt Service Reserve Fund.

If the County obtains a surety bond, insurance policy or letter of credit in substitution for moneys deposited to the applicable Debt Service Reserve Fund as may be permitted under the applicable Supplemental Ordinance, excess moneys in the respective Debt Service Reserve Funds shall be transferred to the applicable Construction Fund, or if one does not exist, be deposited as the County deems advisable.

Section 6.8. Infrastructure Projects Fund.

(a) There is hereby established the Infrastructure Projects Fund to be maintained by the County in a bank or other financial institution. Moneys in the Infrastructure Projects Fund may be applied from time to time as determined by Ordinance of the County, including, but not limited to, to defray the Costs of Acquisition and Construction of one or more Projects. Moneys in this Fund shall be transferred to the Debt Service Fund whenever necessary in order to prevent a default in the payment of principal of, redemption premium, if any, or interest when due on any Bonds after moneys in the Revenue Fund, the Debt Service Fund, or the Debt Service Reserve Fund, if any, have been applied for that purpose.

(b) After required deposits have been made into the Debt Service Fund, the Debt Service Reserve Fund, if any, and payment has been made on any Junior Bonds, there shall be deposited from the Revenue Fund into the Infrastructure Projects Fund the remaining balance of Pledged Revenues, if any.

(c) Withdrawals from the Infrastructure Projects Fund may be made from time to time during any Fiscal Year upon written requisition signed by an Authorized County Representative.

Section 6.9. Establishment of Construction Fund. There shall be established with the Custodian a Construction Fund with respect to each Series of Bonds (other than for Bonds issued pursuant to Section 3.4 hereof) in the Supplemental Ordinance providing for their issuance, the moneys in which shall be used to defray the costs of any Project and to pay any Costs of Acquisition and Construction with respect to the facilities so financed and Costs of Issuance. On the occasion of the delivery of any Series of Bonds (other than Bonds issued pursuant to Section 3.4 hereof), the proceeds therefrom shall be paid into the Construction Fund established for such Series as set forth in a Supplemental Ordinance authorizing their issue. Withdrawals from the Construction Fund shall not be made except as provided in the Supplemental Ordinance establishing such Construction Fund.

Section 6.10. Investment of Funds. Moneys held for the credit of the respective Debt Service Funds shall be invested, to the fullest extent practicable and reasonable, in Permitted Investments which shall mature prior to the respective dates when the moneys held for the credit of such fund will be required for the purpose intended. Moneys in the respective Debt Service Reserve Funds established by this Ordinance or a Supplemental Ordinance shall be invested, to the fullest extent practicable, in Permitted Investments. Moneys in any other funds established by this Ordinance shall be invested, to the fullest extent practicable, in Permitted Investments, maturing at such times and in such amounts as shall be required to provide moneys to make the payments required to be made from such funds. Investment instructions shall be given to the Trustee or to the Custodian, as the case may be, by an Authorized County Representative, provided such instructions which are given orally must be subsequently confirmed in writing.

The Trustee or other depository shall, not later than June 15 of each year, value as of the preceding June 1 or the succeeding Business Day thereafter, Permitted Investments in the various funds established by this Ordinance and held by the Trustee or other depository and shall forward such valuation to the County. The value of Permitted Investments (except investment agreements) shall be determined by the Trustee or other depository at the market value thereof, exclusive of accrued interest, provided, however, Permitted Investments in any Debt Service Reserve Fund shall be valued at cost if the maturity thereof is one year or less and shall be valued at market value and marked to market annually if the maturity thereof is longer than one (1) year. The Trustee shall not be accountable or liable for any depreciation in the value of any investments in any funds or for any losses incurred upon the disposition thereof.

All interest earnings on amounts in any Debt Service Reserve Funds when realized shall be considered Pledged Revenues.

The Trustee shall not be required to enter into any investment, forward delivery or similar agreement unless (a) such agreement is in form and content acceptable to the Trustee, and such agreement provides that the liability of the Trustee thereunder is limited to losses arising from the negligence of the Trustee, and (b) the County agrees to pay the Trustee a separate scheduled fee for its services provided under such agreement.

[Remainder of page intentionally left blank]

ARTICLE VII

COVENANTS

Section 7.1. To Pay Principal, Premium and Interest on the Bonds. The County covenants and agrees to punctually pay, or cause to be paid, out of the Pledged Revenues pledged to such payment in Article VI hereof and the Supplemental Ordinance, the principal of, redemption premium, if any, and the interest on each and every Bond issued under the provisions of this Ordinance at the place, on the dates, and in the manner provided herein.

Section 7.2. Joint County Industrial and Business Parks. The County shall promptly perform the duties and obligations imposed and assumed by it in accordance with the terms and provisions of any Park Agreements. The County shall make all reasonable efforts to enforce each of the Park Agreements in accordance with its respective terms and shall not terminate any Park Agreement or materially reduce the properties therein unless there shall first be provided to the Trustee a certificate executed by an Authorized County Representative stating: (a) that, after consideration of the reduction in the Pledged Revenues resulting from the termination of a Park Agreement or reduction of properties therein, the amount of Pledged Revenues, for the prior consecutive 12 month period would be not less than 120% of the Maximum Debt Service for any succeeding Bond Year of the Bonds then Outstanding hereunder; and (b) the amount of Pledged Revenues remaining after the termination of the Park Agreement or the reduction of properties therein is sufficient to pay Maximum Debt Service for any succeeding Bond Year of the Bonds then Outstanding hereunder.

Section 7.3. Records, Accounts and Audits. The County covenants and agrees to keep proper books of records and accounts (separate from all other records and accounts), in which complete and correct entries shall be made of all transactions relating to the Pledged Revenues. Such records shall be kept in accordance with the standards from time to time prescribed by the Governmental Accounting Standards Board or its successor. The County will cause to be furnished to any Holder of any of the Bonds who makes written request therefor copies of financial statements certified by an Accountant. The Trustee shall not be responsible for obtaining audits of the County.

Section 7.4. Other Obligations and Special Source Credits. Except as otherwise provided in this Ordinance, the County covenants and agrees not to issue any bonds, notes, certificates or other obligations or evidences of indebtedness other than the Bonds or obligations authorized or permitted hereby secured by a pledge of the Pledged Revenues; provided nothing in this Ordinance shall prevent or prohibit the County from issuing any Other Obligations or granting any Special Source Credits after the enactment of this Ordinance.

ARTICLE VIII

TRUSTEE; RESIGNATION OF TRUSTEE; LIABILITY OF TRUSTEE FOR INVESTMENTS; CUSTODIANS

Section 8.1. Trustee. The Council hereby designates Branch Banking and Trust Company as Trustee under this Ordinance.

On or prior to the delivery of the Bond of 2010, the Trustee shall signify its acceptance of the powers, duties and obligations conferred and imposed upon it by this Ordinance by executing and delivering to the County a written instrument of acceptance.

The Trustee shall (a) prior to the occurrence of an Event of Default as set forth in Article X hereof, and after the curing of all Events of Default which may have occurred, perform such duties and obligations as are specifically set forth in this Ordinance, and no implied covenants or obligations shall be read into this Ordinance against the Trustee, and (b) during the existence of any Event of Default of which the Trustee has actual notice (which has not been cured or waived) exercise the rights and powers vested in it by this Ordinance and use the same degree of care and skill in their exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

No provisions of this Ordinance shall be construed to relieve the Trustee from liability for its own negligence or intentionally wrongful action or failure to act.

At all times, (a) the Trustee shall not be liable for any error of judgment made in good faith by an officer or employee of the Trustee unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts; (b) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a majority (or such lesser percentage as is specifically required or permitted by this Ordinance) in the aggregate principal amount of the Bonds at the time Outstanding relating to the time, method and place of conducting a proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Ordinance; and (c) in the administration of the trusts of this Ordinance, the Trustee may execute any of the trusts or powers hereof directly or through its agents or attorneys and shall not be responsible for any misconduct or negligence of any such agent or attorneys. The Trustee may consult with counsel at the County's expense and the written opinion of such counsel addressed to the County and the Trustee shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance with the opinion of such counsel.

The Trustee may rely upon the authenticity and truth of the statements and the correctness of the opinions expressed in, and shall be protected in acting upon any notice, resolution, request, consent order, certificate, report, opinion, note, or other paper or document furnished to it pursuant to any provision of this Ordinance, believed by it to be genuine and to have been signed and presented by the proper party.

The Trustee shall not be required to take notice or be deemed to have notice or actual knowledge of any Event of Default specified in Article X hereof other than a payment default described in subparagraphs A or B of Section 10.1 unless the Trustee shall receive from the County or the Holders of 25% in principal amount of the Bonds then Outstanding written notice stating that an Event of Default hereunder has occurred and specifying the same, and, in the absence of such notice, the Trustee may conclusively assume that there is no such Event of Default.

The Trustee shall be entitled to payment of and reimbursement by the County for reasonable fees and expenses in accordance with its then applicable fee schedule for its services rendered hereunder and all advances and counsel fees reasonably and necessarily made or incurred by the Trustee in connection with such services. The obligations of the County to make the payments described in this Section 8.1 shall survive discharge of this Ordinance, the resignation and removal of the Trustee and payment in full of the Bonds.

The Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conformed to the requirements of this Ordinance.

No provision of this Ordinance or any Supplemental Ordinance shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it has reasonable grounds for believing that the repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

Any request, direction, order or demand of the County under this Ordinance shall be sufficiently evidenced by a written certificate of a Authorized County Representative (unless other evidence thereof is specifically prescribed) and any resolution of the Council may be sufficiently evidenced by a copy thereof certified by an Authorized County Representative.

Whenever in the administration of this Ordinance or any Supplemental Ordinance the Trustee deems it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence thereof is specifically prescribed) may rely upon a certificate of the Authorized County Representative.

The Trustee is not required to make any inquiry or investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, approval, bond, debenture or other paper or document; but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit and, if the Trustee determines to make such further inquiry or investigation, it is entitled to examine the books, records and premises of the County in person or by its agent or attorney.

The Trustee is not required to give any bond or surety with respect to the performance of its duties or the exercise of its powers under this Ordinance or any Supplemental Ordinance.

In the event the Trustee receives inconsistent or conflicting requests and indemnity from two or more groups of holders of Bonds, each representing less than a majority in aggregate principal amount of the Bonds Outstanding, pursuant to the provisions of this Ordinance or any Supplemental Ordinance, the Trustee, in its sole discretion, may determine what action, if any, shall be taken.

The Trustee's immunities and protections from liability and its right to indemnification in connection with the performance of its duties under this Ordinance or any Supplemental Ordinance shall extend to the Trustee's officers, directors, agents, attorneys and employees. Such immunities and protections and right to indemnification, together with the Trustee's right to compensation, shall survive the Trustee's resignation or removal, the discharge of this Ordinance and any Supplemental Ordinance and final payment of the Bonds.

The permissive right of the Trustee to take the actions permitted by this Ordinance and any Supplemental Ordinance shall not be construed as an obligation or duty to do so.

Except for information provided by the Trustee concerning the Trustee, the Trustee shall have no responsibility for any information in any offering memorandum or other disclosure material distributed with respect to the Bonds, and the Trustee shall have no responsibility for compliance with any state or federal securities laws in connection with the Bonds.

The recitals contained in this Ordinance and in the Bonds (other than the certificate of authentication on the Bonds) are statements of the County, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the value, condition or sufficiency of any assets pledged or assigned as security for the Bonds, the right, title or interest of the County therein, the security provided thereby or by this Ordinance, or the tax-exempt status of the Bonds. The Trustee is not accountable for the use or application by the County of any of the Bonds or the proceeds of the Bonds, or for the use or application of any moneys paid over by the Trustee in accordance with any provision of this Ordinance.

The Trustee, in its commercial banking or in any other capacity, may in good faith buy, sell, own, hold and deal in any of the Bonds and may join in any action which any Bondholder may be entitled to take with like effect as if it were not Trustee. The Trustee, in its commercial banking or in any other capacity, may also engage in or be interested in any financial or other transaction with the County and may act as depository, trustee or agent for any committee of Bondholders secured hereby or other obligations of the County as freely as if it were not Trustee. The provisions of this Section 8.1 shall extend to affiliates of the Trustee.

The Trustee shall not, in any event, be required to take, defend, or appear in any legal action or proceeding hereunder or to exercise any of the trusts or powers hereof unless it shall first be adequately indemnified to its satisfaction against the costs, expenses, and liabilities which may be incurred thereby. Every provision of this Ordinance relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions hereof.

To the extent permitted by law, the County hereby agrees to indemnify, defend and hold

the Trustee harmless from and against any loss, liability or expense incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of the office of Trustee under this Ordinance, including the costs of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

Section 8.2. Resignation of Trustee. The Trustee may resign at any time by giving thirty (30) days' written notice to the County and by giving notice to the Holders of the Bonds by publication of such resignation. Such notice shall be published at least once in a financial journal of general circulation published on each business day in each calendar week in the City of New York, New York. No resignation will become effective until a successor Trustee has been appointed and accepts such appointment as provided below. Upon receiving notice of resignation, the County shall promptly appoint such successor Trustee by an instrument in writing executed by order of its Council. In the event a successor Trustee has not been appointed within sixty (60) days of the date notice of resignation is given, the Trustee, at the County's expense, may apply to any court of competent jurisdiction for the appointment of a successor Trustee to act until such time as a successor is appointed as provided in this Section.

Section 8.3. Removal of Trustee. Upon thirty (30) days written notice, the County, at its sole discretion, provided that an Event of Default shall not have occurred and be continuing, may remove the Trustee. The removal of the Trustee under this Section 8.3 shall not be effective until a successor Trustee has been appointed and has accepted the duties of Trustee.

With or without cause, the Holders of a majority in aggregate principal amount of the Bonds at the time outstanding may, upon thirty (30) days written notice to the Trustee and the County, remove the Trustee and appoint a successor Trustee by instrument or instruments in writing signed by such Holders of the Bonds. In the event a successor Trustee has not been appointed within sixty (60) days of the date notice of removal is given, the Trustee, at the County's expense, may apply to any court of competent jurisdiction for the appointment of a successor Trustee to act until such time as a successor is appointed as provided in this Section 8.3.

Section 8.4. Successor Trustee. Unless otherwise ordered by a court or regulatory body having competent jurisdiction, or unless required by law, any successor Trustee shall, if there is such an institution willing, qualified and able to accept the trust upon reasonable or customary terms, be (i) a bank, or a wholly owned subsidiary of a bank holding company, having a combined capital, surplus and undivided profits of at least \$50,000,000; or (ii) a trust company having at least \$100,000,000 of trust assets under management and a combined capital, surplus and undivided profits of at least \$50,000,000 and, in each case, being qualified to do, and doing, trust business in the State.

Any successor Trustee appointed as provided in this section, shall execute, acknowledge and deliver to the County and its predecessor Trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts, duties and obligations of its predecessor of the trust hereunder. Upon the request of any such successor Trustee, the County shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and duties. Upon acceptance of appointment by a successor Trustee, the County shall notify the registered Holder of each Bond then Outstanding by first-class mail, postage prepaid.

The predecessor Trustee shall execute any and all documents necessary or appropriate to convey all interest it may have to the successor Trustee. The predecessor Trustee shall promptly transfer all funds to the successor Trustee and deliver all records relating to the trust or copies thereof and communicate all material information it may have obtained concerning the trust to the successor Trustee.

Any corporation or association into which the Trustee may be merged or with which it may be consolidated, or any corporation or association resulting from any merger, or any corporation or association succeeding to the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto.

Each, every and all funds and accounts held by the Trustee shall be impressed with a trust for the benefit of the Holders of the Bonds, under the provisions of this Ordinance and of the Act.

Section 8.5. Custodians. The Construction Fund shall at the option of the County be held by a bank, a trust company, a national banking association or a national association as Custodian under this Ordinance or a Supplemental Ordinance.

Section 8.6. Liability of Trustee for Investments. The Trustee and all Custodians shall not be liable for the making of any investment authorized by this Ordinance in the manner provided in this Ordinance or for any loss resulting from any such investment so made, except for its own negligence or willful misconduct. All investments shall be made in accordance with Section 6.12 of this Ordinance.

Section 8.7. Trustee and Custodians Protected in Relying upon Resolutions. The Trustee and all Custodians shall at all times be protected in acting upon any notice, resolution, request, consent, order, certificate, statement, opinion, bond, or other paper or document believed to be genuine and to have been signed by the proper party or parties.

[Remainder of page intentionally left blank]

ARTICLE IX

AMENDMENTS OR SUPPLEMENTS TO THIS ORDINANCE

Section 9.1. Amendments or Supplements to this Ordinance. The County shall not amend this Ordinance except in accordance with the provisions of this Article.

A. The County may, from time to time and without the consent of any Holder of the Bonds enact an ordinance amendatory hereof or supplemental hereto for the purpose of (a) providing for the issuance of Bonds pursuant to the provisions of Article III hereof, or (b) (i) making any amendments or modifications hereto which may be required to permit this Ordinance to be qualified under the Trust Indenture Act of 1939, as amended; (ii) making any modification or amendment to this Ordinance not inconsistent herewith required for the correction of language or to cure any ambiguity or defective provisions, omission, mistake or manifest error herein contained; (iii) making any amendments or supplements hereto to grant to or confer upon the Holders additional rights, remedies, power and authority, or to grant to or confer upon any Holders, committee or trustee for the Holders any additional rights, power or authority; or (iv) to add to the security of the Holders of the Bonds.

B. From time to time the Holders of 66-2/3% in principal amount of the Bonds then Outstanding, by an instrument or instruments in writing signed by such Holders and filed with the County and the Trustee, shall have power to assent to and authorize any modification or amendment to the provisions of this Ordinance that may be proposed by the County or of the rights and obligations of the County and of the Holders of Bonds issued hereunder. Any action herein authorized to be taken with the assent and authority given as aforesaid of the Holders of at least 66-2/3% in principal amount of the Bonds at the time Outstanding shall be effective and binding upon all of the Holders of Bonds issued hereunder; and any action herein authorized to be taken with the assent and authority given as aforesaid of the Holders of 66 2/3% in principal amount of the Bonds at the time Outstanding shall be effective and binding upon all of the Holders of Bonds Outstanding and upon the County as fully as though such action were specifically and expressly authorized by the terms of this Ordinance; provided always that without the consent of the Holder of each Bond affected thereby, no such modification shall be made which will (a) extend the time of payment of principal of or the interest on any Bond, or reduce the principal amount thereof or the rate of interest thereon or the premium payable upon the redemption thereof, or (b) give to any Bond or Bonds any preference over any other Bond or Bonds, or (c) authorize the creation of any pledge prior to or, except as provided herein for the issuance of Series of Bonds, on a parity with the pledge afforded by this Ordinance, or (d) reduce the percentage in principal amount of the Bonds required to assent to or authorize any such modification to this Ordinance. For the purpose of computations required by this paragraph, Bonds directly or indirectly owned or controlled by the County shall be disregarded.

Any modification or amendment or supplement to the provisions of this Ordinance or of any Supplemental Ordinance supplemental hereto shall be set forth in an ordinance to be enacted by the County.

No amendment or supplement which adversely affects the Trustee's rights, duties, obligations or responsibilities may be effected without the consent of the Trustee.

[Remainder of page intentionally left blank]

ARTICLE X

EVENTS OF DEFAULT

Section 10.1. Events of Default. With respect to the Bonds, the following shall constitute "Events of Default":

A. If payment of the principal of any Bond, whether at maturity or by proceedings for redemption, or upon mandatory sinking fund redemption, or by declaration as provided in Section 11.1 hereof, or otherwise, is not made by the County as the same becomes due and payable; or

B. If payment of any installment of interest on any Bond is not made by the County as the same becomes due and payable; or

C. If the County shall fail or refuse to comply with the essential provisions of the Act, or shall fail in the due and punctual performance of any of the covenants, conditions, agreements and provisions contained in the Bonds or in this Ordinance or in any Supplemental Ordinance on the part of the County to be performed, and such failure continues for sixty (60) days after written notice specifying such failure and requiring the same to be remedied has been given to the County by the Trustee, or the Holders of not less than 20% in principal amount of the Bonds then Outstanding or any trustee or committee therefor; or

D. If any proceedings are instituted, with the consent or acquiescence of the County, for the purpose of effecting a composition between the County and its creditors and if the claim of such creditors is in any circumstance payable from any of the Pledged Revenues or any other moneys pledged and charged in this Ordinance or any Supplemental Ordinance for the payment of the Bonds, or any such proceedings are instituted for the purpose of adjusting the claims of such creditors, pursuant to any federal or State statute now or hereafter enacted; or

E. If the County is for any reason rendered incapable of fulfilling its obligations hereunder in any material respect.

Subject to the provisions, limitations and conditions of Sections 11.1 and 11.2 hereof, insofar as the remedies provided in said provisions are concerned, nothing in Section 11.3 hereof or in this Article, and particularly nothing in subparagraph C of this Section 10.1, shall prohibit or limit, or be construed as prohibiting or limiting any Holder of a Bond from enforcing the duties of the County, or any of the officers thereof, under any provisions of this Ordinance (including, without limiting the generality of the foregoing, the duties imposed by or referred to in Section 11.3 hereof) by mandamus or other appropriate suit, action or proceeding in any court of competent jurisdiction, even though the failure of the County or any of the officers thereof to perform any such duty may not then constitute an "Event of Default" as defined in this Article.

[Remainder of page intentionally left blank]

ARTICLE XI

REMEDIES UPON EVENT OF DEFAULT

Section 11.1. Declaration of Principal and Interest as Due. Upon the occurrence of an Event of Default, and at any time thereafter while such Event of Default continues, then and in each and every case the Trustee in its own name and as trustee of an express trust, on behalf and for the benefit and protection of the Holders of all Outstanding Bonds, may proceed, and upon the written request of the Holders of not less than 25% in principal amount of the Bonds then Outstanding, shall proceed to declare the principal of all Bonds then Outstanding, together with all accrued and unpaid interest thereon, if not already due, to be due and payable immediately, and upon any such declaration the same shall become and be due and payable immediately, subject to the limitations contained in Section 6.3 hereof. This provision is also subject, however, to the condition that, if at any time after the principal of the Bonds, together with the accrued and unpaid interest thereon and other moneys secured hereby, have been so declared due and payable and before any further action has been taken (other than the making of the above declaration), the principal amount of all Bonds which have matured either according to the maturity date or dates otherwise specified therein (except as a result of such declaration) and all arrears of interest upon all Bonds, except interest accrued but not yet due on said Bonds, have been paid or caused to be paid, and all other Events of Default, if any, which have occurred have been remedied, cured or secured, then and in each and every such case the Holders of 25% in principal amount of the Bonds then Outstanding, by notice in writing delivered to the Trustee and the County, may waive such Default and its consequences and rescind and annul such declaration. No such waiver or rescission or annulment shall extend to or affect any subsequent default or impair or exhaust any right or power related to such subsequent Default.

Section 11.2. Suits at Law or in Equity and Mandamus. In case any one or more of the Events of Default shall happen and be continuing, then and in every such case, but subject to the provisions, limitations and conditions of Section 11.1 hereof so far as the remedies provided in said provisions are concerned, the Holder of any Bond at the time Outstanding, or Trustee therefor, may, for the equal benefit and protection of all Holders of the Bonds similarly situated,

- (a) by mandamus or other suit, action or proceedings at law or in the equity, enforce such Bondholder's right against the County and require and compel the County to perform and carry out its duties and obligations under the Act and this Ordinance, and to perform and carry out its covenants and agreements with the Bondholders;
- (b) by action or suit in equity require the County to account as if such County were the trustee of an express trust;
- (c) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Bondholders; or
- (d) bring suit upon the Bonds.

Section 11.3. Remedies Not Exclusive; Effect of Waiver of Default; Effect of Abandonment of Proceedings or Adverse Determination. The Holders from time to time of the Bonds shall be entitled to all the remedies and benefits of this Ordinance as are and as shall be provided by law, and, subject to the provisions of Section 11.1 hereof, nothing herein shall be construed to limit the rights or remedies of any such Holders under any applicable statute that may now exist or be enacted thereafter. No remedy conferred by the Act and this Article upon any Holder of any Bond is intended to be exclusive of any other remedy. Each and every such remedy shall be cumulative and shall be in addition to every other remedy and may be exercised without exhausting and without regard to any other remedy conferred by the Act and this Article or by any other law now or hereafter existing. Every substantive right and remedy conferred upon the Holders of the Bonds may be enforced and exercised from time to time and as often as may be deemed expedient.

No waiver of any default or breach of duty or contract by any Holder of any Bond shall extend to or affect any subsequent default or breach of duty or contract, or shall impair any rights or remedies thereon. No delay or omission of any Holder of a Bond to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein.

In case any suit, action or proceeding to enforce any right or exercise any remedy shall be brought or taken and then discontinued or abandoned, or shall be determined adversely to Holders of the Bonds then and in every such case, the County and such Holders shall be restored to their former positions and rights and remedies as if no suit, action or proceeding had been brought or taken.

Section 11.4. Restrictions on Bondholder's Action.

A. No Holder of any Bond shall have any right to institute any suit, action or proceeding at law or in equity for the enforcement of any provision of this Ordinance or the execution of any trust under this Ordinance or for any remedy under this Ordinance unless such Holder shall have previously given to the Trustee written notice of the happening of an Event of Default and the Holders of at least 25% in principal amount of the Bonds then Outstanding shall have filed a written request with the Trustee and shall have offered the Trustee reasonable opportunity, either to exercise the powers granted in this Ordinance or by the laws of the State or to institute such action, suit or proceeding in its own name, and unless such Holders shall have offered to the Trustee adequate security and indemnity against the costs, fees (including reasonable attorneys' fees), expenses and liabilities to be incurred therein or thereby, and the Trustee shall have refused to comply with such request for a period of sixty (60) days after receipt by it of such notice, request an offer of indemnity. No one or more Holders of Bonds shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the pledge created by this Ordinance, or to enforce any right under this Ordinance, except in the manner therein provided. All proceedings at law or in equity to enforce any provision of this Ordinance shall be instituted, had and maintained in the manner provided in this Ordinance and for the equal benefit of all Holders of the Outstanding Bonds.

B. Nothing in this Ordinance or in the Bonds contained shall affect or impair the obligation of the County, which is absolute and unconditional, to pay at the respective dates of maturity and places therein expressed the principal of (and redemption premium, if any) and interest on the Bonds to the respective Holders thereof, subject to the limitations contained in Section 6.3 hereof, or affect or impair the right of action, which is also absolute and unconditional, of any Holder to enforce such payment of his Bond.

Section 11.5. Application of Revenues and Other Moneys After Default. During the continuance of an Event of Default, all moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall, after payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the fees, expenses and advances incurred or made by the Trustee with respect thereto, be deposited in the respective Debt Service Funds, and all amounts held by the Trustee hereunder shall be applied as follows (provided if more than one Debt Service Fund has been established, such amounts shall be paid ratably):

A. Unless the principal of all Outstanding Bonds shall have become or have been declared due and payable:

First: To the payment to the persons entitled thereto of all installments of interest then due on the Bonds in the order of maturity of such installments, and, if the amount available shall not be sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably, according to the amounts due thereon to the person entitled thereto, without any discrimination or preference; and

Second: To the payment to the persons entitled thereto of the unpaid principal amounts or redemption premium, if any, of any Bonds which shall have become due (other than Bonds previously called for redemption in accordance with the provisions hereof), whether at maturity or by call for redemption, in the order of their due dates, and if the amounts available shall not be sufficient to pay in full all the Bonds due on any date, then to the payment thereof ratably, according to the principal amounts or redemption premium, if any, due on such date, to the persons entitled thereto, without any discrimination or preference.

B. If the principal amounts of all Outstanding Bonds shall have become or have been declared due and payable, to the payment of the principal amounts and interest then due and unpaid upon the Bonds without preference or priority of principal over interest or of interest over principal, of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal amounts and interest, to the persons entitled thereto without any discrimination or preference.

C. If the principal amounts of all Outstanding Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the provisions of this Article XI, then, subject to the provisions of this Section 11.6 in the event that the principal amounts of all Outstanding Bonds shall later become due or be declared due and payable, the moneys shall be applied in accordance with the provisions of paragraph (A) of this Section 11.6.

D. Whenever moneys are to be applied by the Trustee pursuant to the provisions of this Section, such moneys shall be applied by it at such times, and from time to time, as the Trustee shall determine, having due regard for the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such moneys, it shall fix the date (which shall be a Bond payment date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the principal amounts to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date, and shall not be required to make payment to the Holder of any Bond until such Bond shall be presented to the Trustee for appropriate endorsement of any partial payment or for cancellation if fully paid.

E. Whenever all Bonds and interest thereon have been paid under the provisions of this Section and all expenses and charges of the Trustee have been paid, any balance remaining shall be paid to the person entitled to receive the same; if no other person shall be entitled thereto, then the balance shall be paid to the County or as a court of competent jurisdiction may direct.

[Remainder of page intentionally left blank]

ARTICLE XII

DEFEASANCE

Section 12.1. Defeasance. The obligations of the County under this Ordinance and the liens, pledges, charges, trusts, covenants and agreements of the County herein made or provided for, shall be fully discharged and satisfied as to any Bond; and, unless or except as otherwise provided in the Supplemental Ordinance providing for the issuance of any Series of Bonds, such Bond or Series of Bonds shall no longer be deemed to be Outstanding hereunder, when:

A. Such Bond or Series of Bonds shall have been purchased by the County and surrendered to the County for cancellation or otherwise surrendered to the County or the Paying Agent, and is canceled or subject to cancellation by the County or Paying Agent; or

B. Payment of the principal of, redemption premium, if any, and interest on such Bond or Series of Bonds, either (a) shall have been made or caused to be made in accordance with the terms thereof, or (b) shall have been provided for by irrevocably depositing with the Trustee in trust and irrevocably setting aside exclusively for such payment, (i) moneys sufficient to make such payment, or (ii) Government Obligations maturing as to principal and interest in such amounts and at such times as will ensure the availability of sufficient moneys to make such payment, and all necessary and proper fees, compensation and expenses of the Trustee, Paying Agent and the Registrar, or a combination thereof. At such time as a Bond or Series of Bonds shall no longer be deemed to be Outstanding hereunder, as aforesaid, such Bond or Series of Bonds shall cease to draw interest from the maturity date or redemption date thereof, and, except for the purposes of any such payment from such moneys or Government Obligations, shall no longer be secured by or entitled to the benefits of this Ordinance.

Any moneys so deposited with the Trustee as provided in this Article may at the direction of the County also be invested and reinvested in Government Obligations, maturing in the amounts and times as hereinbefore set forth, and all income from all Government Obligations in the hands of such Trustee which is not required for the payment of the Bonds or Series of Bonds and interest thereon with respect to which such moneys shall have been so deposited, shall be treated as Pledged Revenues.

Notwithstanding any provision hereof which may be contrary to the provisions of this Article, all moneys or Government Obligations set aside and held in trust pursuant to the provisions of this Article for the payment of Bonds or Series of Bonds shall be applied to and used solely for the payment of the particular Bonds or Series of Bonds with respect to which such moneys and Government Obligations have been so set aside in trust.

Any provision hereof to the contrary notwithstanding, if moneys or Government Obligations have been deposited or set aside with the Trustee pursuant to this Article for the payment of the Bonds and such Bonds shall not have in fact been actually paid in full, no amendment to the provisions of this Article shall be made without the consent of the Bondholder of each Bond or Series of Bonds affected thereby.

If moneys or Government Obligations have been deposited with the Trustee pursuant to this Section 12.1 for payment of less than all Bonds of a Series and maturity, the Bonds of such

Series and maturity to be so paid from such deposit shall be selected by the Trustee by lot by such method as shall provide for the selection of portions (in authorized denominations) of the principal of Bonds of such Series and maturity of a denomination larger than the smallest authorized denomination. Such selection shall be made within seven (7) days after the moneys or Government Obligations have been deposited with the Trustee. This selection process shall be in lieu of the selection process otherwise provided with respect to redemption of Bonds in Article V. After such selection is made, Bonds that are to be paid from such deposit (including Bonds issued in exchange for such Bonds pursuant to the transfer or exchange provisions of this Ordinance) shall be identified by a separate CUSIP number or other designation satisfactory to the Trustee. The Trustee shall notify Bondholders whose Bonds (or portions thereof) have been selected for payment from the moneys or Government Obligations on deposit and shall direct such Bondholders to surrender their Bonds to the Trustee in exchange for Bonds with the appropriate designation. The selection of Bonds for payment from such deposit pursuant to this paragraph shall be conclusive and binding upon the County and the Bondholders.

The County shall give to the Trustee in form satisfactory to it irrevocable instructions to give notice of the deposit of moneys or Government Obligations, the selection of Bonds to be redeemed including CUSIP numbers and the anticipated date of redemption. The Trustee shall promptly give such notice to the Bondholders including the information required under Section 5.3.

[Remainder of page intentionally left blank]

ARTICLE XIII

MISCELLANEOUS

Section 13.1. Benefits of Ordinance Limited to the County, the Trustee and Holders of the Bonds. With the exception of rights or benefits herein expressly conferred, nothing expressed or mentioned in or to be implied from this Ordinance or the Bonds is intended or should be construed to confer upon or give to any person other than the County, the Trustee and the Holders of the Bonds, any legal or equitable right, remedy or claim under or by reason of or in respect to this Ordinance or any covenant, condition, stipulation, promise, agreement or provision herein contained. This Ordinance and all of the covenants, conditions, stipulations, promises, agreements and provisions hereof are intended to be and shall be for and inure to the sole and exclusive benefit of the County, the Trustee and the Holders from time to time of the Bonds as herein and therein provided.

Section 13.2. Ordinance Binding Upon Successors or Assigns of the County. All the terms, provisions, conditions, covenants, warranties and agreements contained in this Ordinance shall be binding upon the successors and assigns of the County and shall inure to the benefit of the Trustee, its successors or substitutes in trust and assigns, and the Holders of the Bonds.

Section 13.3. No Personal Liability. No recourse shall be had for the enforcement of any obligation, covenant, promise or agreement of the County contained in this Ordinance or the Bonds, against any member of the County, any officer or employee, as such, in his or her individual capacity, past, present or future, of the County, either directly or through the County, whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise. It is expressly agreed and understood that this Ordinance and the Bonds are solely corporate obligations, and that no personal liability whatsoever shall attach to, or be incurred by, any member, officer or employee as such past, present or future, of the County, either directly or by reason of any of the obligations, covenants, promises, or agreements entered into between the County and the Trustee or the Bondholder or to be implied therefrom as being supplemental hereto or thereto. All personal liability of that character against every such member, officer and employee is, by the adoption of this Ordinance and the execution of the Bonds, and as a condition of, and as a part of the consideration for, the adoption of this Ordinance and the execution of the Bonds, expressly waived and released. The immunity of members, officers and employees of the County under the provisions contained in this Section 13.3 shall survive the termination of this Ordinance.

Section 13.4. Effect of Saturdays, Sundays and Legal Holidays. Whenever this Ordinance requires any action to be taken on a Saturday, Sunday, legal holiday or bank holiday in the State, such action shall be taken on the first Business Day occurring thereafter. Whenever in this Ordinance the time within which any action is required to be taken or within which any right will lapse or expire shall terminate on a Saturday, Sunday, legal holiday or bank holiday, in the State, such time shall continue to run until midnight on the succeeding Business Day. Interest on such principal amount shall cease to accrue on the date on which such payment was due if such payment is made on the immediately succeeding Business Day.

Section 13.5. Partial Invalidity. If any one or more of the covenants or agreements or portions thereof provided in this Ordinance on the part of the County or the Trustee or any

Paying Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, then such covenant or covenants, or such agreement or agreements, or such portions thereof, shall be deemed severable from the remaining covenants and agreements and portions thereof provided in this Ordinance and the invalidity thereof shall in no way affect the validity of the other provisions of this Ordinance or of the Bonds, but the Holders of the Bonds shall retain all the rights and benefits accorded to them hereunder and under any applicable provisions of law.

If any provisions of this Ordinance shall be held or deemed to be or shall, in fact, be inoperative or unenforceable or invalid as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because of conflicts with any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable or invalid in any other case or circumstance, or of rendering any other provision or provisions herein contained inoperative or unenforceable or invalid to any extent whatever.

Section 13.6. Law and Place of Enforcement of this Ordinance. This Ordinance shall be construed and interpreted in accordance with the laws of the State and all suits and actions arising out of this Ordinance shall be instituted in a court of competent jurisdiction in the State.

Section 13.7. Effect of Article and Section Headings and Table of Contents. The headings or titles of the several Articles and Sections hereof, and any table of contents appended hereto or to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction, interpretation or effect of this Ordinance.

Section 13.8. Amendment to Multi-County Park Ordinances; Repeal of Inconsistent Ordinances and Resolutions. The Multi-County Park Ordinances, other than the Multi-County Park Ordinance which authorized the establishment of the Highpointe/PointeWest Park, are hereby amended to provide that fifteen percent (15%) of the Fee Payments retained by the County for properties located within both the geographical boundaries of the County and in the respective Joint County Industrial and Business Parks authorized to be established by such Multi-County Park Ordinances, after payment of the Multi-County Fee to one or more Partner Counties under the terms of the respective Park Agreements, shall be retained by the County deposited into the Revenue Fund established herein and be made available to pay for costs of infrastructure for economic development in the County, including payment of Debt Service on Bonds or Junior Bonds. All remaining provisions of the Multi-County Park Ordinances shall remain unchanged. All ordinances and resolutions of the County, and any part of any ordinance or resolution, inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

Section 13.9. Effectiveness of this Ordinance. This Ordinance shall become effective upon its enactment; provided, however, that it shall not be necessary for the County to establish the funds and accounts created in Article VI hereof prior to the issuance of any Bonds.

Section 13.10. Notices. All notices, certificates, or other communications hereunder or under this Ordinance shall be sufficiently given and shall be deemed given when mailed by registered mail, postage prepaid, or given when dispatched by telegram addressed as follows:

If to the County:

Oconee County, South Carolina
415 S. Pine Street
Walhalla, South Carolina 29691
Attention: County Administrator

If to the Trustee:

Branch Banking and Trust Company
223 West Nash Street
Wilson, North Carolina 27893
Attention: Corporate Trust Department

The County and the Trustee may, by notice given to the other parties, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 13.11. Codification. This Ordinance shall be forthwith codified in the Code of County Ordinances in the manner required by law and the name shall be indexed under the general heading "General Bond Ordinance – Oconee County, South Carolina, Special Source Revenue Bonds".

[Signature page follows]

OCONEE COUNTY, SOUTH CAROLINA

(SEAL)

Chairman, County Council
Oconee County, South Carolina

ATTEST:

Administrator, Oconee County, South Carolina

Clerk to County Council,
Oconee County, South Carolina

[Signature Page]

freecreditscore.com

**Is your Credit Score
Weak or Strong?**

Find out HERE!

340

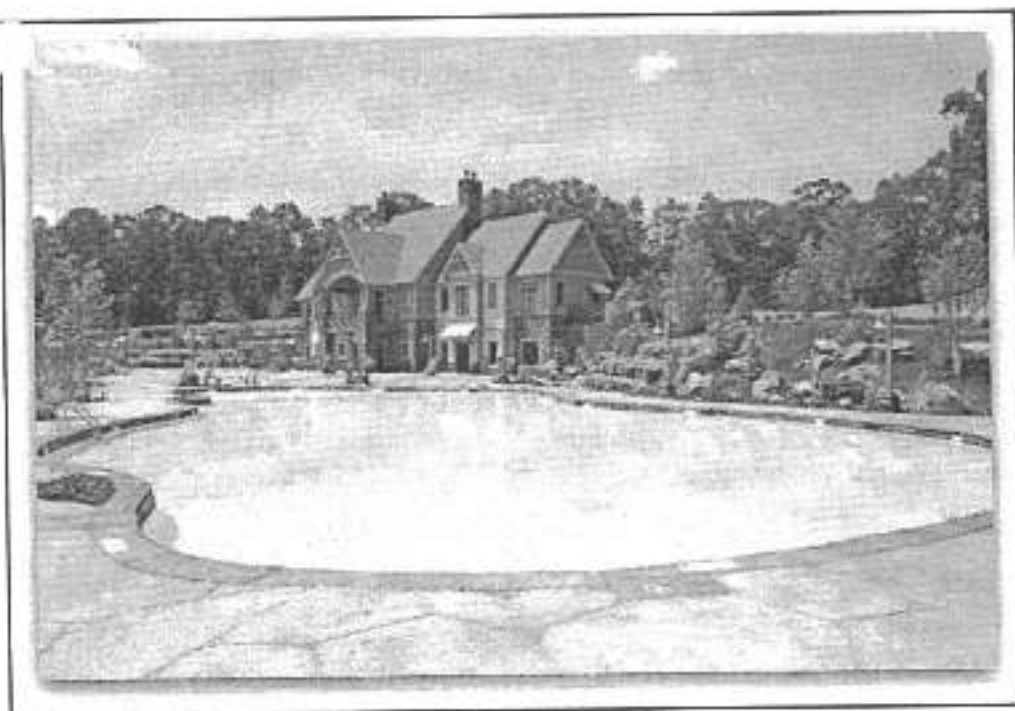
- [A Pic's Worth ...](#)
- [America](#)
- [Good Stuff](#)
- [News Releases](#)
- [Palmetto Pulse](#)
- [Radio Archive](#)
- [SC Politics](#)
- [Sports](#)
- [Star Stuff](#)
- [Videos](#)

[Home](#) / [SC Politics](#) / [Sources: Clemson Administrators Implicated In Alleged Housing Scam](#)

Sources: Clemson Administrators Implicated In Alleged Housing Scam

By [fitsnews](#) • on March 23, 2009

[Comment](#) [Email](#) [Print](#) [ShareThis](#)



Several of Clemson University's top administrators may be making some extra bank – and we're not just talking about their exorbitant salaries and double-digit annual raises.

...our sources are correct, they could be involved in an elaborate housing scam (and cover-up) enabling them to personally profit off of official University business.

The controversy centers around a company called Clemson Academic Ventures, LLC – which was incorporated in September of 2008 by developer Tom Winkopp.

Winkopp is the man responsible for “Highpointe of Clemson,” a luxury student apartment complex located two miles from the University campus.

Highpointe is the residence community where incoming “Bridge Program” students – or students aspiring to transfer to Clemson from nearby Tri-County Technical College – are required to live beginning this fall.

In fact, four hundred Bridge Program students will be *required* to live at the development starting this August.

Now here’s where it gets interesting ...

A Clemson University employee searching the local Register of Deeds website last fall found the names of Dori Helms (Clemson’s Provost), Carl Helms (her spouse), Debbie Jackson (Vice-Provost and Assistant to the President) and Verna Howell (Associate Vice-President) listed as owners of condominiums at the Highpointe development.

When the employee passed this information up the food chain, however, the names of these administrators quickly disappeared from the website – and were replaced “Clemson Academic Ventures, LLC.”

Multiple sources have now confirmed to FITS that prior to the switch – each of these names were at one point listed on the Oconee County Register of Deeds website as being property owners, and that each of these Clemson administrators indeed has a vested interest in the development.

So why did their names vanish so quickly?

According to our sources, these Clemson officials didn’t want it to become public knowledge that they might have been involved in official University business aimed at guaranteeing their personal real estate investments (Clemson Academic Ventures is backed by a \$2.1 million loan from the Greer State Bank) and creating substantial personal financial gain for years to come.

Helms, for example, would have had to personally sign off on all new program contracts and requirements in her capacity as Clemson’s Provost – including the \$2,880 per semester in lodging costs that “Bridge Program” students must pay, as well as an additional “Highpointe Academic Facilities fee” of \$285.

That’s a total of \$3,165 per student – and at 400 students, that’s \$1.3 million a semester – meaning that Highpointe would have its loan paid off during its first year of operation.

No one associated with the deal is talking, but after one of our inquiries into the matter last week a Tigertown source said the school’s top brass were “apoplectic” about the revelations breaking on FITS, which is obviously quite well-read in the President’s Office.

Already facing University-wide outrage for its bureaucratic boondoggling, Clemson’s administration can ill afford another major scandal.

It remains to be seen whether this one will blow up in their faces or not, but if Helms and others were directly profiting off of decisions made in their official capacities, they should not only be fired but brought up on charges.

Stay tuned ...


WEB EXTRAS:

Highpointe of Clemson (Official Website)

<http://www.fitsnews.com/2009/03/23/sources-clemson-administrators-implicated-in-alleged-housing-scam/> 4/13/2010

[Clemson University Bridge Program \(Official Housing Information\)](#)

[Clemson University Bridge Program \(Official Costs Information\)](#)



Want to Try
Online Dating?

match.com

FREE 7 Day Trial

**Office
DEPOT****outsmart 'em:**
put your business ahead of the rest

SAVE NOW

- [A Pic's Worth ...](#)
- [America](#)
- [Good Stuff](#)
- [News Releases](#)
- [Palmetto Pulse](#)
- [Radio Archive](#)
- [SC Politics](#)
- [Sports](#)
- [Star Stuff](#)
- [Videos](#)

[Home](#) / [SC Politics](#) / [Tigertown Flatly Denies Housing Scam Reports](#)

Tigertown Flatly Denies Housing Scam Reports

By [fitsnews](#) • on March 23, 2009[Comment](#) [Email](#) [Print](#) [ShareThis](#)

Speaking through their taxpayer-provided legal counsel, four Clemson University administrators accused of being involved in an alleged campus housing scam have flatly denied any association with Clemson Academic Ventures, LLC, the "Highpointe of Clemson" condominium development or Tom Winkopp, the developer of the property.

Clemson University general counsel Clay Steadman issued the blanket denial in a terse phone conversation with FITS founding editor Sic Willie this afternoon, saying "none of these people ever owned any condominiums" and that they had "never done any business" with the company, the development or Winkopp.

Steadman also indicated that the four administrators would be "submitting sworn affidavits attesting to these facts" as soon as tomorrow.

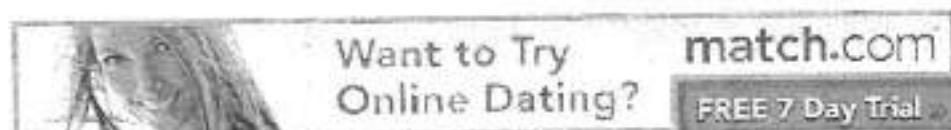
Obviously, we will publish those affidavits as soon as we receive them.

...multiple sources have told FITS that the names of four Clemson administrators appeared as owners of Highpointe property on a local Register of Deeds website last fall – until their names were allegedly removed and later replaced with "Clemson Academic Ventures LLC."

Clemson currently requires about 400 of its "Bridge Program" students to live at the Highpointe development, which prompted allegations that administrators may have been using their pull to guarantee personal real estate investments.

Confronted with Steadman's firm and unequivocal denial on behalf of the Clemson officials, our sources just as firmly and just as unequivocally said they stood by their version of events.

Developing ...

A horizontal banner advertisement for Match.com. On the left is a small, square image of a woman's face. To the right of the image, the text reads "Want to Try Online Dating?" in a large, bold font. Further right, the "match.com" logo is displayed in a dark, rounded rectangular box. Below the logo, the text "FREE 7 Day Trial" is written in a smaller font, followed by a small right-pointing arrow.



OBAMACARE

- [A Pic's Worth ...](#)
- [America](#)
- [Good Stuff](#)
- [News Releases](#)
- [Palmetto Pulse](#)
- [Radio Archive](#)
- [SC Politics](#)
- [Sports](#)
- [Star Stuff](#)
- [Videos](#)

[Home](#) / [SC Politics](#) / [Clemson Administrators File Affidavits Denying Housing Scam](#)

Clemson Administrators File Affidavits Denying Housing Scam

By [fitsnews](#) • on March 25, 2009

[Comment](#) [Email Print](#) [ShareThis](#)



Clemson University administrators filed affidavits yesterday solidifying previous denials of any involvement in an alleged housing scam.

The identically-worded affidavits were submitted by Provost Dori Helms, Vice Provost Debra Jackson and Associate Vice President Verna Howell.

Submitting a separate affidavit was developer Tom Winkopp, whose "Highpointe of Clemson" development is at the center of accusations that these Clemson officials conducted official business for personal gain.

Calling the Clemson employees who made the accusations "cowards," the school's general counsel Clayton Steadman challenged these employees to come forward with affidavits of their own attesting to their version of events.

"It is a shame that cowards such as these individuals can spread false and hurtful mistruths about fine people such as Dr. Helms, Dr. Jackson, Ms. Howell and Mr. Winkopp and all of whom have given greatly of their talents for the benefit of Clemson University," Steadman said.

Yet even amid such high-level push back from Clemson against the allegations, multiple new sources have contacted FITS to confirm that the alleged scandal was indeed discussed at a December 2008 meeting of the "Tiger Brotherhood," a secret society on the Clemson campus.

You can view the affidavits below, and stay tuned for a story on the "Clemson Civil War" that provides the backdrop for these accusations.

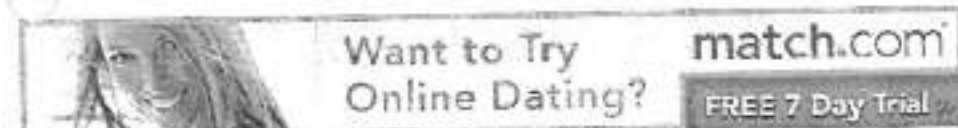
WEB EXTRAS:

[*Helms Affidavit*](#)

[*Howell Affidavit*](#)

[*Jackson Affidavit*](#)

[*Winkopp Affidavit*](#)

A horizontal banner advertisement for Match.com. On the left is a small image of a woman's face. To the right of the image, the text reads "Want to Try Online Dating?" in a large, bold font. To the right of this text is the Match.com logo, which consists of the word "match.com" in a stylized font. Below the logo, it says "FREE 7 Day Trial" in a smaller font. The entire banner has a dark background with light-colored text and images.

Want to Try
Online Dating? **match.com**
FREE 7 Day Trial

**Memorandum of Agreement
Between
Tri-County Technical College
And
Highpoints, LLC**

For Application To
The Bridge to Clemson University Housing and Amenities Requirements

This Memorandum of Agreement (MOA) establishes an agreement between Tri-County Technical College and Highpoints, LLC.

I. MISSION

Highpoints, LLC will provide Tri-County Technical College student facilities for the Bridge to Clemson University program at Highpoints of Clemson. Highpoints of Clemson is an upscale student community located 2.4 miles from Clemson University and 4.6 miles from Tri-County Technical College and is capable of supporting the anticipated future growth of the Bridge to Clemson University program. These facilities will include housing and amenities for students.

Together, the Parties enter into this Memorandum of Agreement to mutually provide for the anticipated needs of the Bridge to Clemson University program. Accordingly, Tri-County Technical College and Highpoints, LLC, operating under this MOA, agree as follows:

II. PURPOSE AND SCOPE

The scope of this agreement between Tri-County Technical College and Highpoints, LLC is described as follows:

Tri-County Technical College is unconditionally obligated to require and cause all Bridge to Clemson students to be housed at Highpoints of Clemson, located at 500 West cherry Road, Clemson, 29631 for the initial five (5) year period based on the following schedule:

August 1, 2009 and ending May 31, 2010 – 108 units, 432 students*

August 1, 2010 and ending May 31, 2011 – 180 units, 720 students*


August 1, 2011 and ending May 31, 2012 – 204 units, 816 students*

August 1, 2012 and ending May 31, 2013 – 228 units, 912 students*

August 1, 2013 and ending May 31, 2014 – 228 units, 912 students*

*These numbers represent the minimum number of Bridge students that will be required to live at Highpoints of Clemson.

The contract period will be five (5) years with rolling annual one (1) year renewals of additional five (5) year contracts (i.e. a new five (5) year contract will be renewed each year). The contract is renewable annually on March 12th per the original execution date of this agreement on March 12th, 2008. The lease amount per bedroom, per student for the August 1, 2009 to May 30th school year is five thousand one hundred dollars (\$5,100.00) payable in two equal installments of \$2,550.00 due in July and December.



Increases in rent will occur annually in a percentage equal to the Consumer Price Index (CPI). All Bridge to Clemson University students will be required to be housed at Highpoints of Clemson pursuant to the terms of this agreement and will be required to pay rent to Highpoints, LLC or assigns directly. Tri-County Technical College agrees to provide annual accounting of Bridge Program enrollment to verify.

The following table outlines the conversion from per student per semester rent to annual per unit rent:

Semester Rent Per Student	\$2,550
Annual Rent Per Student (2 semesters per year)	\$5,100
Annual Rent Per Unit (4 students per unit)	\$20,400

Highpoints, LLC agrees to pay power, cable, water, sewer, and internet expenses on behalf of Bridge students who will prepay expected utility costs to Highpointe, LLC to be included in each semester payment at an amount of three hundred and thirty (330) dollars per semester per student. It is expressly agreed between Highpoints, LLC and Tri-County Technical College that the prepayment amount by students for power, cable, water, sewer, and internet are based on current market rates. In the event that any of these utility expenses to be paid by Highpoints, LLC exceed the prepayments by 5%, Highpointe, LLC has the right to adjust the prepayments for subsequent terms to current levels. Phone utility expenses shall be the responsibility of the tenants on a per unit basis. Highpointe, LLC will work with Tri-County Technical College on a communication plan to ensure students do not utilize excessive power and water/sewer as the current structure allows them to prepay without seeing monthly bills. Highpointe, LLC has the right to apply a surcharge to individual tenants who utilize excessive power or water/sewer.

Schedule of Utility Prepayment Calculation

Utilities Per Month Per Unit (August 1 to May 30th)

Power	\$110
Water and Sewer	\$65
Cable and Internet	\$70
Total Per Month	\$245
Total 10 Months	\$2,450

Utilities Per Month Per Unit (June 1st July 31st)

Power (50%)	\$55
Water and Sewer	\$40
Cable and Internet	\$0
Total Per Month	\$95
Total 2 Months	\$190

Summary

Total 12 Months Utilities	\$2,640
Per Semester Per Unit	\$1,320
Per Semester Per Student	\$330

The contract between Tri-County Technical College and each individual student to be enrolled in The Bridge Program shall have a term for no less than one full academic year. All monies paid for the residential and utility components shall be paid to Highpointe, LLC or assigns.

Tri-County Technical College agrees to adopt the rules and regulations as set forth in the Standard Lease Agreement for Highpointe of Clemson. Tri-County Technical College and its representatives further agree to have the students adhere to all of the requirements as set forth in the Standard Lease Agreement as well as the rules and regulations as set forth by the Highpointe Owner's Association. A copy of this Standard Lease is attached as Exhibit A.

Each party to this MOA is responsible for its own expenses related to this MOA. There will not be an exchange of funds between the parties for tasks associated with this MOA.

III. RESPONSIBILITIES

Each party will appoint a person to serve as the official contact and coordinate the activities of each organization in carrying out this MOA. The initial appointees of each organization are:

Will Huss

Principal, Highpointe, LLC

Ronnie L. Booth, Ph.D.

President, Tri-County Technical College

The organizations agree to the following tasks for this MOA:

Highpointe, LLC will:

1. Contract with Highpointe, LLC for the development and building of housing facilities available by August 15th of each year.
2. Provide individual housing units for Bridge students with the following characteristics:
 - a. 4 bedroom, 4 bathroom units
 - b. Private bathroom in each bedroom
 - c. Walk-in closets and a built-in desk in each bedroom
 - d. Full-service kitchen with washer and dryer included
 - e. Cable, phone, internet capable in all bedroom and living areas
 - f. The following items will not be the responsibility of Highpointe, LLC
 - i. Furnishings for individual units
3. Resident advisors rent waiver
 - a. Rent equivalent to \$5,100 annually will be waived for up to eight (8) Resident Advisors for the Bridge Program school year beginning August of 2009
 - b. All resident advisors will be required to pay their own utilities fees including power, water, sewer, cable, and internet in the same amount established for Bridge students.
 - c. Future resident advisor rent waivers will be mutually agreed upon by all parties to this contract.
4. Provide common areas and amenities as follows
 - a. 24-hour manned security guardhouse
 - b. 7-acre park for outdoor recreation

Will Huss

- c. Pedestrian access to educational facilities.
 - d. Pool Area
 - e. Clubhouse
 - f. An owner's association will be responsible for common area power, cable, phone, water, sewer payments.
5. Provide the ability for CAT bus service to enter and exit Highpointe, LLC.

Tri-County Technical College will:

1. Require and cause all Bridge Program students to live at Highpointe of Clemson.
2. Collect the Residence Advance Payment on behalf of Highpointe, LLC.
3. Require Bridge students to pay lease rates in two equal installments in August (less advance payment) and December
4. Require Bridge students to pre-pay power, cable, water, sewer, and internet in advance per semester
5. Collect residence and utility payments on behalf of Highpointe, LLC in order to ensure that all students have paid on time and deliver them to Highpointe, LLC.
6. Assist Highpointe, LLC with any collections due to non-payment of the 2nd semester residence and utility fee.
7. Withhold admittance into the Bridge Program any student that has not paid their first or second semester residence or utility payments.

Additional Items of Importance:

1. The proposed Resident Advisor to student ratio is 1:47 which represents one Resident Advisor for each building of 48 bedrooms. Resident Advisor rent will be waived at this ratio. Additional Resident Advisor units can be provided at the standard rental rate.

IV. TERMS OF AGREEMENT

The contract period will be five (5) years with rolling annual one (1) year renewals of additional five (5) year contracts (i.e. a new five (5) year contract will be renewed each year). The contract is renewable annually on March 12th per the original execution date of this agreement on March 12th, 2008. It shall be reviewed at least annually to ensure that it is fulfilling its purpose and to make any necessary revisions.

V. DEFAULT

Upon the default of either party to this agreement the other party shall have all of the rights and remedies afforded by law or equity.

Authorization

This agreement shall be fully assignable by either party with the written consent of the other, which consent shall not be unreasonably withheld. Both parties shall inure to the benefit of and bind the successors and assigns of the parties. In witness, the parties have duly executed this Agreement as of the day and year first written.



Will Huss

Will Huss, Highpoints, LLC

4 Dec 2008

Date

Charlynn Gill

Witness

RUBK

Ronnie L. Booth, Ph.D., Tri-County Technical College

December 4, 2008

Date

Doris Simpson

Witness

RS SD

TRI-COUNTY TECHNICAL COLLEGE
BRIDGE TO CLEMSON

Fee Schedule for Bridge Participants – Fall Semester 2009*

Due Date	Item	Amount	Paid To
Upon receipt of Acceptance Letter			
3/22	TCTC Registration Admin/Program Fee Advance Payment	\$275	TCTC
	Residence Advance Payment – non-refundable	\$500	Highpoints
	Total due upon receipt of acceptance letter (The Admin/Program Fee and Residence Advance Payment are NON-REFUNDABLE)	<u>\$775</u>	
8/1	Remaining Semester Residence Fee Due <ul style="list-style-type: none"> • Based on quad occupancy • Includes rent for 1 semester • Students sign a 2 semester lease with landlord payable in August and December 	\$2050	Highpoints
	Semester utility prepayment: Power, Cable, Water, Sewer, Internet	\$330	Highpoints
	Annual facilities fee	\$285	Clemson Academic Ventures
8/9	Balance of TCT Registration Admin/ Program Fee	\$275	TCTC
8/9	Clemson Site Services/Activity Fee	\$600	TCTC
8/9	Tri-County Technical College Tuition Note: Tuition for Fall Semester will be established on or around June 1, 2009. Current Tuition: <ul style="list-style-type: none"> • In-County • Out-County • Out-of-State 	TBD	TCTC
	Total Estimated Semester Program and Housing Costs Excluding Tuition	<u>\$4,315</u>	

*Fees and Due Dates represent estimates and are subject to change.

*Tuition and Bridge fees will be due for spring semester on January 6, 2010.

*Residence fee of \$2,550 and for spring semester will be due in December, 2009.

*Utility prepayment does not include phone. An additional prepayment will be due for spring semester in December, 2009.

Fee Description:

- TCTC Administrative/Program Fee is a fee covering orientation, residence life programs and socials, and the cost of administering the Bridge to Clemson Program

- Annual facilities fee is a fee that provides Bridge Students onsite educational facilities and resources at Highpoints of Clemson

- Clemson Site Services/Activity Fee is a fee that allows student access to healthcare, recreation, academic support and other activities at Clemson University

RESIDENTIAL RENTAL AGREEMENT

STATE OF South Carolina

HIGHPOINTE, LLC

Date/Parties This rental agreement made and entered into this _____ day of _____, 20____, by and between Advantage Property Management, Landlord, and _____, Tenant.

Description And Terms 1. That Landlord, in consideration of the rent served herein to be paid by said Tenant and of the covenants, agreements, and conditions hereinafter contained to be kept, performed, and observed by said Tenant, does hereby let and rent unto said Tenant the premises known as _____, in or near _____, South Carolina, _____ to be used and occupied as a residence, and for no other purpose for a term beginning _____ and ending _____. If either the Landlord or Tenant does/does not wish to renew this rental agreement, the party shall notify the other party in writing by _____ of such intention.

Use 2. Tenant agrees that the dwelling is to be used in accordance to the laws of _____, as a private dwelling and for no other purpose. There shall be no pets. The Lessee agrees not to allow any nuisance or illegal activity to exist on the premises and to maintain the premises in an orderly fashion and neat condition. Lessee recognizes that excessive noise by tenant or tenant's guest or other activities disturbing other renters of the Lessor shall constitute default under the terms of this lease. Tenant is also responsible for the acts of their children, pets, and visitors.

Rent and Utility Prepayments 3. That Tenant, in consideration of the use of the dosmed premises and of the covenants and agreement made herein by the Landlord, rents said premises and does hereby promise to pay HIGHPOINTE, LLC, agent for the Landlord, per semester in August and December, as a rental, (\$ _____) dollars in check, cash, or money order and utility prepayments in the amount of \$330 per semester in August and December. Rents shall be paid at the office of HIGHPOINTE, LLC, 391 College Avenue, Suite 202, Clemson, South Carolina 29631.

Late Fees 4. Tenant understands that if the total rent and utility pre-payment is not received in the office of HIGHPOINTE, LLC the due date, acceptance into Tri-County Technical College and/or Clemson University may be withheld and or eviction proceedings will begin. If a check is returned for any reason, there will be a \$30.00 charge in addition to the full amount of the check. An after hours mail slot is provided for your convenience. No two party checks taken for any charges.

Security Deposit 5. Tenant understands that in lieu of a security deposit, Highpointe, LLC has the right to request Tri-County Technical College to deny admission into Clemson University and/or remove a tenant from the Bridge to Clemson program. If upon inspection, the premises are found to be in as good conditions as the beginning of the lease; normal wear and tear expected; and provided covenants, agreements and conditions on the part of the Tenant have been complied with entirely.

Condition Premises 6. Tenant accepts the premises in the present condition and acknowledges that the premises have been inspected. The Lessee shall inspect said premises and advise the Lessor in writing within fifteen (15) calendar days of any damage or excessive wear and tear not initially noted. The Lessee will receive an acknowledgement to be returned and retained by Lessor until the premise is vacated.

Winterizing 7. In subfreezing (below 32 degrees) weather, thermostats should be set no lower than 50 degrees. Tenant shall be responsible for any damage to said premises or adjoining premises due to lack of adequate heat to prevent frozen pipes.

Tenant Maintenance 8. Tenant agrees to keep and maintain the premises in a good, clean condition and to make no alterations or additions thereon without written consent of the Landlord, or the Landlord's agent. It is especially understood that the Tenant will maintain the following items at their own expense: Keep the sinks, lavatories, and commodes open; report any malfunction within 24 hours; repair/replace any damage to the interior or exterior walls, equipment, electrical or plumbing fixtures, screens, doors, and other furnishings; keep outside grounds free from unsightly objects and other debris; mandatory changing of heating and air conditioning filters every three (3) months by tenants or by Bridge Program staff; pay for any service to heating system caused by Tenant's inadequate supply of fuel or filters; repay the Landlord for cost of all repairs made necessary by negligent or careless use of said premises. Tenant is responsible for acts of vandals or burglars until the keys have been returned to the office of HIGHPOINTE, LLC. Satellite dishes cannot be connected to the buildings in any form. Cables must be run

THIS IS A LEGAL, BINDING CONTRACT IN ACCORDANCE WITH SOUTH CAROLINA LANDLORD AND TENANT ACT, A COPY OF WHICH IS AVAILABLE FOR YOUR INSPECTION AT THE OFFICE OF ADVANTAGE PROPERTY MANAGEMENT, LLC.

Handwritten initials/signature

through existing cable lines. Any holes drilled for the purpose of running cable lines must be approved by HIGHPOINTE, LLC. The tenant agrees to promptly report any repairs that need to be made to the property. No Tenant-incurred expenses shall be deducted from the monthly rent under any circumstances whatsoever. To pay for all utilities used while occupying said premises. Tenant shall not paint or wallpaper any portion of the premises without written consent of Landlord. Indiscriminate hanging of pictures, ceiling hooks, decorative plates, stick-on posters and emblems or other items of a similar nature shall be treated as damages. Tenant shall be responsible for the cost of restoring said premises to their original condition if he/she makes any such unauthorized modifications.

**Right of
Re-Entry**

9. Tenant agrees to permit the Landlord or his agents to enter the premises at reasonable hours for the purpose of making inspections and repairs and also to permit the Landlord or his agents to enter the premises in case of fire, storm, or need for emergency repair. The tenant agrees to allow HIGHPOINTE, LLC to show the premises during the hours of 9am to 6 pm Monday-Saturday to prospective tenants with a proper 24 hour notice.

**Assignment or
Subletting**

10. The Tenant further covenants that he/she will not allow anyone to share said premises, keep roomers or boarders, nor assign, sublet, or transfer said premises or any part thereof without the Landlord's written consent.

Condemnation

11. It is agreed between the Landlord and the Tenant that if the whole or any part of said premises hereby rented shall be taken by a competent authority or any public or quasi-public use or purpose and in that event, the terms of this rental agreement shall cease and terminate from the date when the possession of the part so taken shall be required for such use or purpose. All damages awarded for such a taking shall belong to and be property of the Landlord.

Eviction

12. In the event the premises are condemned by a government agency or the Tenant is evicted due to the Landlord's negligence, then this rental agreement will terminate from the date of said eviction. Upon the failure of the Tenant to make any payment of rent when it is due or if the Tenant should breach any other covenants, agreements, or conditions herein contained or if the premises are abandoned, deserted, or vacated, then at the option of the Landlord or his agent, this rental agreement shall terminate after a fourteen (14) day notice the Tenant and the Landlord may re-enter and repossess the said premises and remove and put out Tenant and each and every occupant. In the event of re-entry by the Landlord, it is herein provided that tenant shall be liable for damages to said Landlord for all loss sustained. If Tenant is evicted before the end of lease term, rent will continue to be paid until a qualified replacement resident is located and residing at premises.

**Damages by
Fire to**

13. *Tenant shall be responsible for insuring his own possessions against fire and other catastrophes. Neither the property owner nor HIGHPOINTE, LLC will provide insurance for tenant's personal property.*

Premises

If during the term of the rental agreement, the premises should be partially destroyed by fire or other casualty, the Landlord shall make whole any damage to the structure with all reasonable diligence and without interruption of Tenancy. If, however, the premises sustain a fire or other casualty that render the premises uninhabitable, then the rental agreement would terminate and the rent would cease to accrue as of the date of the destruction. In the event of fire or other casualty, the Tenant is to notify the Landlord or agent at once. Landlord and Tenant release each other from liability for loss or damage occurring on or to the rented premises or the premises of which they are a part of or of the contents of either thereof, caused by fire or other hazard ordinarily covered by fire and extended coverage insurance policies and each waives all rights of recovery against the other for such loss or damage. Willful misconduct lawfully attributable to either party, whether in whole or in part a contributing cause of the casualty giving rise to the loss or damage, shall not be excuses under the foregoing release and waiver.

**Quiet
Enjoyment**

14. Landlord agrees and covenants that the tenant shall have peaceful and quiet enjoyment of the demised premises for the duration of this occupancy, provided, of course, that the Tenant complies with the covenants, agreements and conditions stated herein.

**Conditions of
Acceptance
Into Clemson
University**

15. (A) All terms and conditions of rental agreement have been met.
(B) Upon vacating premises, Tenant promises to pay all charges in full. The burden of proof of payment shall be upon the Tenant.
(C) Clean entire residence, remove all trash and other debris from premises.
(D) Lock and fasten all doors and windows
(E) Carpets must be *professionally steam cleaned and a receipt provided for verification.*
(F) Leave forwarding address and return all keys to HIGHPOINTE, LLC

THIS IS A LEGAL, BINDING CONTRACT IN ACCORDANCE WITH SOUTH CAROLINA LANDLORD AND TENANT ACT, A COPY OF WHICH IS AVAILABLE FOR YOUR INSPECTION AT THE OFFICE OF ADVANTAGE PROPERTY MANAGEMENT, LLC.

Handwritten initials/signature

Memorandum of Agreement
Between
Tri-County Technical College
And
Clemson Academic Ventures, LLC

For Application To
The Bridge to Clemson University Educational and Office Space Requirements

This Memorandum of Agreement (MOA) establishes an agreement between Tri-County Technical College and Clemson Academic Ventures, LLC.

I. MISSION

Provide educational and administrative space for The Bridge to Clemson University Program.

Together, the Parties enter into this Memorandum of Agreement to mutually provide for the anticipated needs of the Bridge to Clemson University program. Accordingly, Tri-County Technical College and Clemson Academic Ventures, LLC, operating under this MOA, agree as follows:

II. PURPOSE AND SCOPE

The scope of this agreement between Tri-County Technical College and Clemson Academic Ventures, LLC is described as follows:

Clemson Academic Ventures, LLC will construct an 8,600(+/-) square foot facility (Educational and Administrative Facility) for the benefit of the Bridge Program, faculty and students. Each Bridge student including any possible Bridge commuters, will be required to pay an annual facilities charge of two hundred and eighty five dollars (\$285.00) to Clemson Academic Ventures, LLC. All monies paid for the facility fee shall be paid to Clemson Academic Ventures, LLC or assigns and due by August for the academic year that follows. This fee will be tied directly to the Educational and Administrative Facility to cover holding and operating costs as Clemson Academic Ventures, LLC will retain ownership of the facility. Increases in this fee will occur annually in a percentage equal to the Consumer Price Index (CPI). Clemson Academic Ventures, LLC will be responsible for hazard insurance and taxes for the Educational and Administrative Facility. Furniture, fixtures, equipment, and utilities related to the Educational and Administrative Facility will be the responsibility of Tri-County Technical College. The facility will be complete and ready for occupancy by August 15th 2009.

Each party to this MOA is responsible for its own expenses related to this MOA. There will not be an exchange of funds between the parties for tasks associated with this MOA.

III. RESPONSIBILITIES

Each party will appoint a person to serve as the official contact and coordinate the activities of each organization in carrying out this MOA. The initial appointees of each organization are:

Will Huss
Principal, Clemson Academic Ventures, LLC



Ronnie L. Booth, Ph.D.
President, Tri-County Technical College

The organizations agree to the following tasks for this MOA:

Clemson Academic Ventures, LLC will:

1. Provide an 8,600 square foot educational and administrative facility to be complete and ready for occupancy by August 15th, 2009.
 - a. Addendum A provides more information as to the location and floor plan of the facility to be constructed.
2. Pay for hazard insurance and taxes related to the Educational and Administrative Facility

Tri-County Technical College will:

1. Require all enrollees of the Bridge to Clemson University program to pay facilities fees for the Educational and Administrative Facility irrespective of where they are housed.
2. Be responsible for furniture, fixtures, and equipment in the Educational and Administrative Facility
3. Pay utilities and upkeep of the Educational and Administrative Facility
4. Collect payments on behalf of Clemson Academic Ventures, LLC in order to ensure that all students have paid on time and deliver them to Clemson Academic Ventures, LLC.
5. Withhold admittance into the Bridge Program for any student who has not paid their facilities fee.

IV. TERMS OF AGREEMENT

The contract period will be five (5) years with rolling annual one (1) year renewals of additional five (5) year contracts (i.e. a new five (5) year contract will be renewed each year). The contract is renewable annually on March 12th per the original execution date of this agreement on March 12th, 2008. It shall be reviewed at least annually to ensure that it is fulfilling its purpose and to make any necessary revisions.

V. Default

Upon the default of either party to this agreement the other party shall have available all of the remedies provided by law or equity.

Authorization

This agreement is fully assignable by the parties with the consent of the other party, which consent will not be unreasonably withheld. Both parties shall insure to the benefit of and bind the successors and assigns of the parties. In witness, the parties have duly executed this Agreement as of the day and year first written.



Will Huss, Clemson Academic Ventures, LLC

4 Dec 2008

Date



Chadwick Gill
Witness

RBH
Ronnie L. Booth, Ph.D., Tri-County Technical College

December 4, 2007
Date

Doris Simpson
Witness

[Handwritten mark]



State of South Carolina

Change Order #1

Contract Number:	N/A
Procurement Officer:	Gregg Stapleton
Phone:	(864) 646-1796
E-Mail Address:	gstaplet@tctc.edu
Address:	P.O. Box 587, Pendleton, SC 29670

DESCRIPTION: Memorandum of Agreement Between Tri-County Technical College and Highpoints, LLC; Bridge to Clemson University Housing and Amenities Requirements dated December 4, 2008

USING GOVERNMENTAL UNIT: Tri-County Technical College

CONTRACTOR'S NAME AND ADDRESS:

TYPE OF CHANGE:

- Change to Contract Scope of Work
- Change to Contract Pricing Pursuant to Existing Contract Clause.
Clause Name _____
- Administrative Change to Contract (such as changes in paying office, name of Agency Contract Administrator, etc.)
- Other Change

IMPORTANT NOTICE:

- Change Order: Contractor is required to sign this document and return 1 copies to the procurement officer named above by the following date: January 25, 2010.
- Contract Modification: Contractor is required to acknowledge receipt of this document in writing by the following date: _____. Contractor does not indicate agreement with change simply by acknowledging receipt.

DESCRIPTION OF CHANGE / MODIFICATION:

This change order adjusts rates, fees, and payments set forth in the original agreement as follows:

- A) Section II, paragraph 2 establishes the schedule of lease rates and stipulates these will be increased annually in a percentage equal to the Consumer Price Index (CPI). This change order:
 - a. Re-establishes base rental rates in recognition that, at the request of Tri-County Technical College, Contractor is required to modify future unit floor plans to include a one-bedroom unit and a two-bedroom unit in each Bridge Building constructed in order to accommodate the staff housing of Resident Assistants. (See the attached exhibit depicting the agreed upon floor plan.)
 - b. Revises base rental rates to add a fee for newly created two bedroom units.
 - c. Sets new base rates that will take effect beginning in the 2010-2011 academic year as specified immediately below:

Rental Fee – per student in 4 bedroom unit	\$2,688 per semester
Rental Fee – per student in 2 bedroom unit	\$3,300 per semester
 - d. Clarifies that increases in these revised base rates will continue to be made annually at a rate equal to the Consumer Price Index (CPI) per Section II, paragraph 2.
 - e. Clarifies that the CPI measure used to adjust base contract rates will be the Consumer Price Index for All Urban Consumers (CPI-U) or "headline CPI" for the 12 months ended December of the most recent year as published in February by the Bureau of Labor Statistics.
- B) Section II, paragraph 3 establishes utility fees charged to students. Based on provisions of this section of the contract, this change order increases the utility fee to \$340 per semester per student for the 2010-2011 academic year.
- C) This change order adds a one-time, refundable security deposit of \$300 due and payable with the initial rental and utility fees paid by each student. The deposit will be held pending:
 - a. return of room and common areas in good condition, excepting normal wear and tear, or
 - b. payment by student of any surcharges for excessive power or water/sewer utilization per Section II, paragraph 3 of the original agreement.
 - c. adherence to lease terms
- D) All other rates, fees, and payments remain as stipulated in the original contract.

Additionally – this change order clarifies the understanding of the following terms and conditions set forth in the original agreement:

- A) Under Section II, paragraph 1 – Bridge to Clemson students required to live at Highpoints of Clemson are subject to the total number of Bridge to Clemson students enrolled in the program after being accepted by Clemson University less those that have been granted a housing waiver under the Bridge program rules established by Tri-County Technical College

lease term that exceeds 10% of the budgeted amount for the same period. The budgeted amount for power and water/sewer shall be disclosed to the Bridge Program annually. (The 2009-2010 budget for power and water/sewer is \$175 per month per unit; the 2010-2011 budget for power and water/sewer will be \$183 per month per unit.)

C) Under Section II, paragraph 5 – the Standard Lease Agreement has been modified. The revised Standard Lease Agreement is attached to this change order and replaces Exhibit A of the original Memorandum of Agreement.

D) Under Section III, paragraph 2 – item 7 requires Tri-County Technical College to withhold admittance of students who have not paid their first or second semester residence or utility payments. It is not possible, however, to withhold admittance of these students from the program because they are admitted prior to collecting their housing payments. It is understood that students who do not make said payments in their first semester will not be given access to housing and students who do not make payments in the spring semester will be subject to Highpointe's eviction process. Upon eviction, students who are not eligible to receive a formal housing waiver, under TCTC's standard housing waiver parameters (See A above), will be subject to dismissal from the Bridge to Clemson program.

E) Execution of a "Parental or Sponsor Guaranty" will be required in conjunction with the Residential Rental Agreement. (insert any amount of text here)

SIGNATURE OF PERSON AUTHORIZED TO EXECUTE THIS CHANGE ORDER ON BEHALF OF CONTRACTOR:

By: 
(authorized signature)

Thomas Winkler
(printed name of person signing above)

Its: man LLC
(title of person signing above)

Date: 2/8/2010

SIGNATURE OF PERSON AUTHORIZED TO EXECUTE / ISSUE THIS CHANGE ORDER / CONTRACT MODIFICATION ON BEHALF OF USING-GOVERNMENTAL ENTITY:

By: 
(authorized signature)

Gregg A. Stapleton
(printed name of person signing above)

Its: Vice President for Business Affairs
(title of person signing above)

Date: 2/2/2010

RESIDENTIAL RENTAL AGREEMENT

STATE OF South Carolina

HIGHPOINTE, LLC

Date/Parties

This rental agreement made and entered into this _____ day of _____, 2009, by and between Highpointe, LLC, Landlord, and _____, Tenant.

1. Description And Terms

That Landlord, in consideration of the rent served herein to be paid by said Tenant and of the covenants, agreements, and conditions hereinafter contained to be kept, performed, and observed by said Tenant, does hereby let and rent unto said Tenant the premises known as Highpointe of Clemson, in or near Seneca, South Carolina, 29678 to be used and occupied as a residence, and for no other purpose for a term beginning August 20th, 2010 and ending May 6th 2011.

2. Use

Tenant agrees that the dwelling is to be used in accordance to the laws of South Carolina, as a private dwelling and for no other purpose. There shall be no pets. The Lessee agrees not to allow any nuisance or illegal activity to exist on the premises and to maintain the premises in an orderly fashion and neat condition. Lessee recognizes that excessive noise by tenant or tenant's guest or other activities disturbing other renters of the Lessor shall constitute default under the terms of this lease. Tenant is also responsible for the acts of their visitors. Additionally, if a student withdraws or is dismissed from the Bridge program, they must vacate the apartment. Rent for the second semester must be paid in full as this leases constitutes a contractual obligation through the ending period of the lease.

3. Rent and Utility Payments

That Tenant, in consideration of the use of the decmed premises and of the covenants and agreement made herein by the Landlord, rents said premises and does hereby promise to pay HIGHPOINTE, LLC, agent for the Landlord, per semester in August and December, as a rental, (\$3,028) dollars in check, cash, or money order which includes utility prepayments in the amount of \$340 per semester in August and December. August rent due for the fall semester will exclude the \$500 housing prepayment so the net amount due in August shall be \$2,528. Rents shall be paid to the office of HIGHPOINTE, LLC, 201 West Cherry Road, Seneca, South Carolina 29678. Tenant understands that water, sewer, internet, and television programming have been paid for in advance and the excess use of utilities over the prepaid amount will be the responsibility of the Tenant.

4. Late Fees

Tenant understands that if the total rent and utility pre-payment is not received in the office of HIGHPOINTE, LLC by the due date, the tenant's Bridge Program status may be affected and/or eviction proceedings will begin. If a check is returned for any reason, there will be a \$30.00 charge in addition to the full amount of the check. No two party checks taken for any charges.

5. Security Deposit

A security deposit of \$300 collected from the Tenant when this lease is executed shall be forfeited to the Landlord (agent) if the Tenant fails for any reason to go into possession of the premises, the deposit shall be held by the Landlord as security against loss from damage, non-payment of rents, or any other damages caused breach of the lease by the Tenant. The deposit may then be refunded to the tenant upon termination of this lease within thirty (30) days. If upon inspection, the premises are found to be in as good conditions as the beginning of the lease, normal wear and tear expected; and provided covenants, agreements and conditions on the part of the Tenant have been complied with entirely. **SECURITY DEPOSIT IS NOT TO BE USED AS RENT.** Tenant understands that failure to pay for damages may affect their Bridge Program status.

6. Condition of Premises

Tenant accepts the premises in the present condition and acknowledges that the premises have been inspected as noted in the apartment condition report on file with the Bridge Program office. The Lessee shall inspect said premises and advise the Lessor in writing within five (5) calendar days of any damage or excessive wear and tear not initially noted. The Lessee will receive an acknowledgement to be returned and retained by Lessor until the premise is vacated.

7. Winterizing

THIS IS A LEGAL, BINDING CONTRACT IN ACCORDANCE WITH SOUTH CAROLINA LANDLORD AND TENANT ACT, A COPY OF WHICH IS AVAILABLE FOR YOUR INSPECTION AT THE OFFICE OF HIGHPOINTE, LLC.

In subfreezing (below 32 degrees) weather, thermostats should be set no lower than 50 degrees. Tenant shall be responsible for any damage to said premises or adjoining premises due to lack of adequate heat to prevent frozen pipes.

6. Tenant Maintenance

Tenant agrees to keep and maintain the premises in a good, clean condition and to make no alterations or additions thereon without written consent of the Landlord, or the Landlord's agent. It is especially understood that the Tenant will maintain the following items at their own expense: Keep the sinks, lavatories, and commodes open; report any malfunction within 24 hours; repair/replace any damage to the interior or exterior walls, equipment, electrical or plumbing fixtures, screens, doors, and other furnishings; keep outside grounds free from unsightly objects and other debris; ~~mandatory changing of heating and air conditioning filters every three (3) months by tenants or by Bridge Program staff~~; pay for any service to heating system caused by Tenant's improper use of heating and air conditioning systems; repay the Landlord for cost of all repairs made necessary by negligent or careless use of said premises. Tenant is responsible for acts of vandals or burglars until the keys have been returned to the office of HIGHPOINTE, LLC. Satellite dishes cannot be connected to the buildings in any form. Cables must be run through existing cable lines. Any holes drilled for the purpose of running cable lines must be approved by HIGHPOINTE, LLC. The tenant agrees to promptly report any repairs that need to be made to the property. No Tenant-incurred expenses shall be deducted from the monthly rent under any circumstances whatsoever. Tenant shall not paint or wallpaper any portion of the premises without written consent of Landlord. Indiscriminate hanging of pictures, ceiling hooks, decorative plates, stick-on posters and emblems or other items of a similar nature shall be treated as damages. Tenant shall be responsible for the cost of restoring said premises to their original condition if he/she makes any such unauthorized modifications.

9. Right of Re-Entry

Tenant agrees to permit the Landlord or his agents to enter the premises at reasonable hours for the purpose of making inspections and repairs and also to permit the Landlord or his agents to enter the premises in case of fire, storm, or need for emergency repair.

10. Assignment or Subletting

The Tenant further covenants that he/she will not allow anyone to share said premises, keep roomers or boarders, nor assign, sublet, or transfer said premises or any part.

11. Condemnation

It is agreed between the Landlord and the Tenant that if the whole or any part of said premises hereby rented shall be taken by a competent authority or any public or quasi-public use or purpose and in that event, the terms of this rental agreement shall cease and terminate from the date when the possession of the part so taken shall be required for such use or purpose. All damages awarded for such a taking shall belong to and be property of the Landlord.

12. Eviction

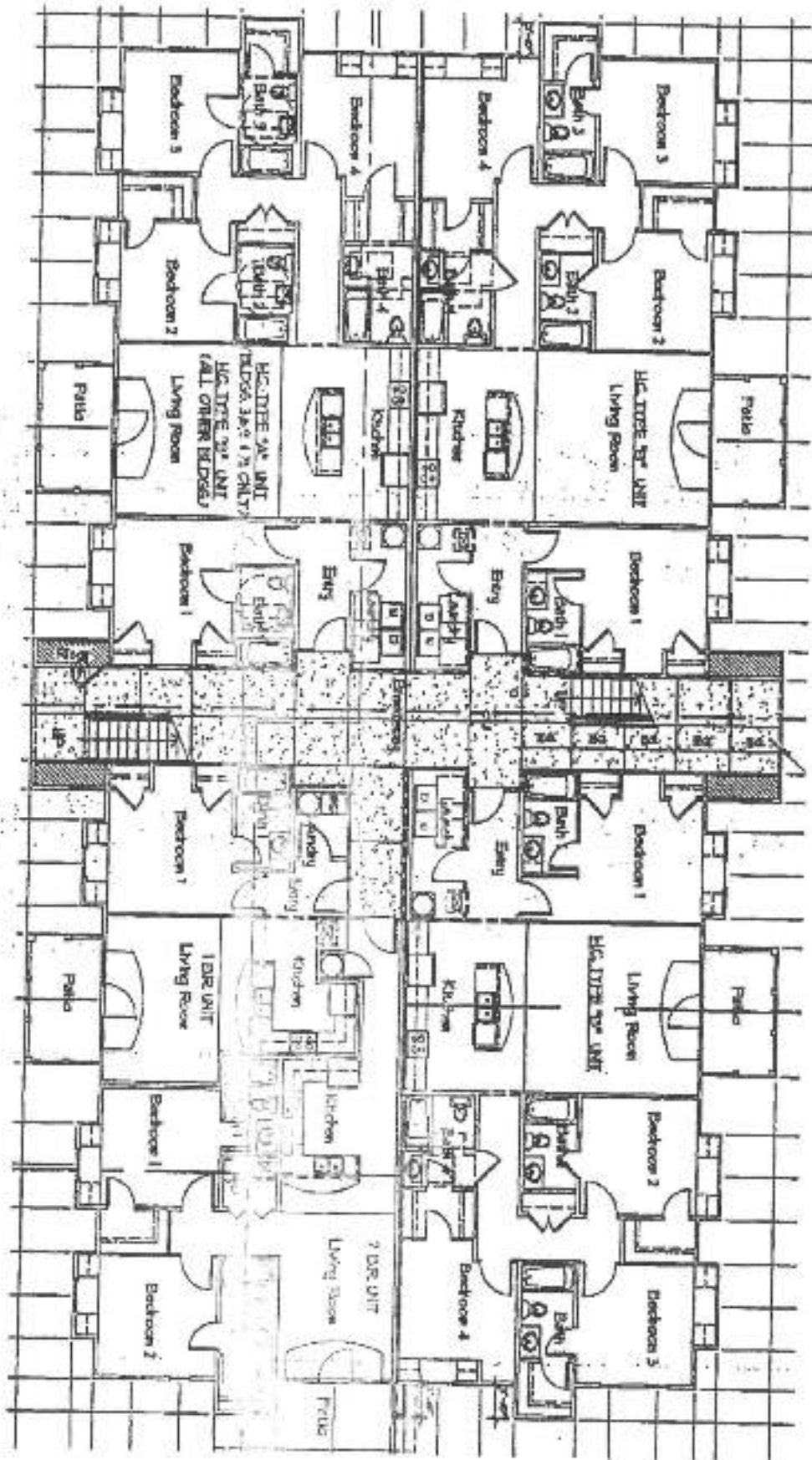
In the event the premises are condemned by a government agency or the Tenant is evicted due to the Landlord's negligence, then this rental agreement will terminate from the date of said eviction. Upon the failure of the Tenant to make any payment of rent when it is due or if the Tenant should breach any other covenants, agreements, or conditions herein contained or if the premises are abandoned, deserted, or vacated, then at the option of the Landlord or his agent, this rental agreement shall terminate after a fourteen (14) day notice the Tenant and the Landlord may re-enter and repossess the said premises and remove and put out Tenant and each and every occupant. In the event of re-entry by the Landlord, it is herein provided that tenant shall be liable for damages to said Landlord for all loss sustained. If Tenant is evicted before the end of the lease term, rent will continue to be paid until a qualified replacement resident is located and residing at premises.

13. Damages by Fire to Premises

Tenant shall be responsible for insuring his own possessions against fire and other catastrophes. Neither the property owner nor HIGHPOINTE, LLC will provide insurance for tenant's personal property. If during the term of the rental agreement, the premises should be partially destroyed by fire or other casualty, the Landlord shall make whole any damage to the structure with all reasonable diligence and without interruption of Tenancy. If, however, the premises sustain a fire or other casualty that render the premises uninhabitable, then the rental agreement would terminate and the rent would cease to accrue as of the date of the destruction. In the event of fire or other casualty, the Tenant is to notify the Landlord or agent at once. Landlord and Tenant release each other from liability for loss or damage occurring on or to the rented premises or the premises of which they are a part of or of the contents of either

THIS IS A LEGAL, BINDING CONTRACT IN ACCORDANCE WITH SOUTH CAROLINA LANDLORD AND TENANT ACT, A COPY OF WHICH IS AVAILABLE FOR YOUR INSPECTION AT THE OFFICE OF HIGHPOINTE, LLC.

Exhibit A: New Floor Plan



The Local Government Fiscal Impacts of Land Uses in Union County:

Revenue and Expenditure Streams by Land Use Category

Jeffrey H. Dorfman and Bethany Lavigno
Department of Agricultural & Applied Economics
The University of Georgia

February 2006

The funding for this study was provided by Union County. Data were collected with the cooperation of Union County officials and staff.

across land use categories, emphasis is placed on the expert knowledge of county staff to estimate service expenditures by land use category. Data on the acreage, population, and property value in each land use category is also used in determining some expenditure allocations.

COCS studies look at average revenues and expenditures, not changes at the margin, and are thus not capable of precisely predicting the impact of future decisions. Still, they provide the benefit of hindsight, a budgetary baseline from which to make decisions about the future. They can also allow for informed decision-making on such policy topics as tax abatements for farm or forestland (or even for commercial/industrial development). Further, educated guesses can often be made from these averages as to the likely marginal cost of development and the impact on a local government's financial situation as a result of land use transition.

Review of COCS Studies from Around the Nation and In Georgia

About 90 COCS studies have been completed by a variety of researchers around the country for cities and rural communities. The maximum, median, and minimum ratios of local government revenues-to-expenditures collected from these studies are shown in Table 1. The "Minimum" row states that for every dollar the county generates from the residential category, it spends \$2.11 in services. The commercial/industrial and farm/forestland categories show that, on average, the government receives more than it spends and therefore, these land uses create a surplus. The numbers show the fallacy of depending on residential development as a sound growth policy. In not a single instance did residential development generate sufficient revenue to cover its associated expenditures. Results of other Georgia studies are shown in the appendix.

Table 1. A National Summary of COCS Study Results

County	Revenue: Expenditures		
	Residential	Comm/Ind	Farm/Forest
Minimum	1 : 2.11	1 : 1.04	1 : 0.99
Median	1 : 1.15	1 : 0.27	1 : 0.36
Maximum	1 : 1.02	1 : 0.05	1 : 0.02

Footnote: these figures are for 83 COCS studies compiled by the American Farmland Trust (http://www.farmlandinfo.org/fic/fas/COCS_9-01.pdf).

Bedroom communities are not economically sustainable at tax rates that are likely to be levied. In fact, when a rural community with a large base of farm and forestland begins to convert that land into residential development, either as a planned growth strategy or due to market forces and a lack of growth control measures, the local government is virtually guaranteed to head down a path of deteriorating financial stability and increasing local property tax rates.

Union County

Three land use categories were defined for this study: residential, commercial/ industrial, and farm/forest/open space. The residential category was also subdivided to allow a separate depiction of the fiscal impacts of manufactured housing. Financial information was obtained from Union County and the Union County School System. For Union County, the data are for the year ended December 31, 2004; for the schools, the data are for the 2003-2004 school year. The revenues and expenditures in the budgets were allocated to the land use categories based on the review of available records and interviews with local officials and service providers (farmhouses were included in residential category.) Revenues and expenditures were totaled for each land use category and revenues-to-expenditures ratios were calculated. In calculating the ratios, an adjustment was performed to account for revenue generated from sources outside the county (which amounted to 6.0% of the total revenues); this adjustment recognizes that all expenditures are partially funded from these outside sources. The final results are displayed and tabulated in Figures 1 and 2 below. Figure 1 represents the county government only with schools excluded. Figure 2 shows how the results change when schools are included. The figures are presented as dollars of revenue per dollar of expenditure; numbers greater than one signify land uses generating more in revenue than they are receiving in service expenditures.

Analysis of the revenue-to-expenditure ratio for the farm and forestland category in Union County reveals a common result: residential development provides less in revenue than it requires in service expenditures (with or without schools included). Within the residential category, separate results have been included for manufactured housing. (Note that manufactured housing also is included in the general residential housing category.) As shown in Figures 1 and 2, manufactured housing creates an even larger fiscal deficit for local governments and schools than residential development in general. This is due to the lower appraised values, leading to lower property tax payments. The commercial/industrial category produces a solid fiscal surplus for the county government, while the farm and forest land in Union County generates a very small fiscal surplus for the school system.

*Does Geo get a hand
a plot for market*

Break-even Home Values

The cost of service and revenue generation numbers that lie behind the ratios reported above can also be used to calculate the home value necessary for a county or school board to break-even. If one assumes that service cost is fairly constant across houses relative to the home value, such computations are straightforward. Further, this is not an unreasonable assumption as local government service costs will vary with house location, lot size, and (for schools) with number of kids, but are not particularly correlated with home value. Given this assumption, the county government's average service cost per house is easily calculated, as is the revenue from all residential sources other than property tax from houses. Then, one can use the county millage rate and homestead exemption to find the home value where revenue will exactly equal service cost; we call this the break-even home value. For schools, the average per pupil cost from local tax money is computed (state and federal money is excluded) and then the school millage rate and exemptions allow the computation of a break-even home value needed to generate sufficient local revenue to cover the locally-generated expenditures for whatever number of children per household is expected or is being modeled. Figure 3 shows the breakeven home value for Union County to be \$121,442 (the average appraised home value in 2004 is about \$75,883 excluding manufactured housing, \$71,848 including it).

Figure 1.

Revenues per \$1 of Expenditures by Land Use
(County Government Only)

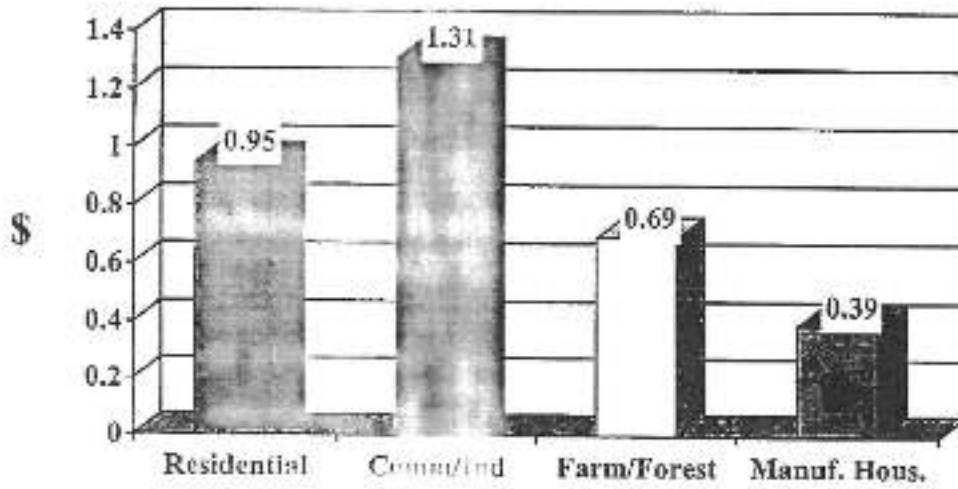
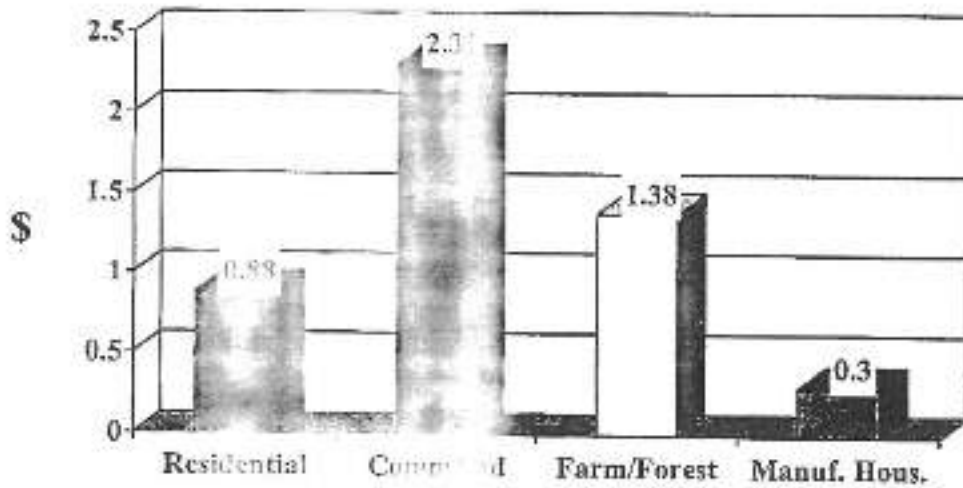


Figure 2.

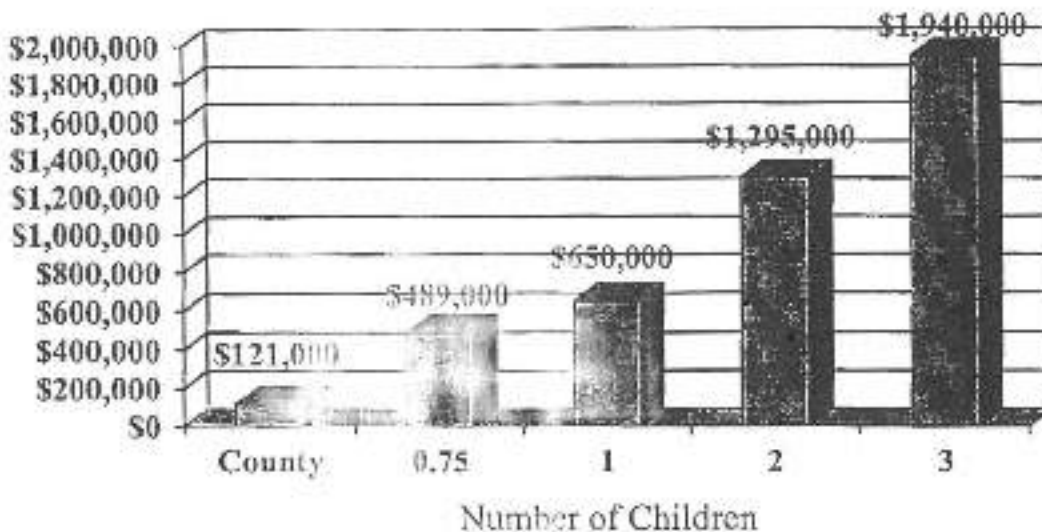
Revenues per \$1 of Expenditures by Land Use
(County Government Plus Schools)



While the government breaks-even on a \$121,442 house, they are just one entity in the county. From the county school system perspective, the results are quite different. If a home contains just one child attending the public county schools, the break-even home value is \$649,900 from the point of view of the schools' budget. Thus, the county government will be earning a fiscal surplus off a house with a single child long before the schools. With two kids in school, the break-even home price increases to \$1,294,900. Census data suggests that a home in Union County is likely to have about three quarters of a child of public school age. The break-even value for homes from the school system point of view using this average of 0.75 pupils per household is \$488,700. This is well above the average value of new houses being constructed in Union County. Thus, in most cases public education of children must be subsidized by taxes paid from other land use classes along with school taxes paid by homeowners without children in the public school system.

The main insight from these numbers is that school expenses are the main service burden from residential development. Yet, with no direct control over growth and land use policies, schools are required by law to accept all children who move into their jurisdictions.

Figure 3. Union County Breakeven Home Values



*All values to the nearest \$1000. Values do not account for dedicated capital fund revenues and expenditures.

How Much Does Farm Preservation Cost?

There has been an ongoing debate over the equity of state and local government programs that provide tax relief for farm and forestland. These programs provide tax relief by assessing the land at its "current use" in place of its "highest and best use." In return, landowners must agree to keep the land in its current use for 10 years or be subject to financial penalties. These programs help to slow development and preserve farm/forestland and green space. In Georgia, agricultural lands are eligible for enrollment in the Conservation Use Valuation Assessment (CUVA) or the Agricultural Preferential (AG PREF) program to receive these tax incentives.

A major underlying question, however, is: How much of a tax burden is shifted to homeowners to make up for this loss in revenue? This question can be answered in Union County by empirical investigation of the tax digest and the results of the COCS. Table 2 below was compiled from the Union County Tax Digest Consolidated Summaries and shows the loss in revenue for Union County as a result of the two programs.

Table 2. Lost Revenue in Union County from Preferential Assessment Programs

Government Program	Parcel Count	Value Eliminated	State Tax Loss	County Tax Loss	School Tax Loss	Total Tax Loss
CUVA	838	\$60,581,609	\$12,645	\$280,497	\$477,038	\$750,181
AG PREF	2	\$151,207	\$35	\$779	\$1,426	\$2,243

To compute the impact of these tax incentive programs, the reduction in the tax digest (the sum total of property value in the county) due to these programs is added back into the tax digest. This yields a hypothetical tax digest as if these programs did not exist. Then a millage rate is computed to produce the same revenue as collected currently by the local government and school combined. This produces a slightly lower millage rate that property owners would pay if these tax incentive programs did not exist. The difference between this lower, hypothetical rate and the actual millage rate (0.37 mil's for the county and 0.67 for the schools) allows computation of the fiscal impact of these tax programs for any specified property value. Table 3 shows the amount of additional property tax (both county and school) a homeowner pays because of the existence on these programs that benefit agricultural landowners. The numbers are computed for various home prices and a standard homestead exemption. For example, the owner of a \$75,000 house pays an additional \$29.10 per year. These tax increases are quite small, particularly given the large role of agriculture in Union County. A fair number of these homeowners are farmland owners, their relatives, or employees of an agriculturally related enterprise. It seems likely that a majority of Union County taxpayers would consider this additional tax worthwhile in exchange for helping to preserve farmland in their county.

Table 3. Homeowner Tax Increases as a Result of Farmland Assessment Programs

House Value	\$50,000	\$75,000	\$100,000	\$150,000	\$200,000
Additional Tax	\$18.71	\$29.10	\$39.49	\$60.28	\$81.06

Implications for Governments and Farm/Forest Land Preservation Efforts

The main implication of COCS studies is that a local government that approves the conversion of farm or forestland to residential development is likely to face a worsening in its financial condition. While the lure of an increased property tax base is often attractive to a local government when it is considering a request to approve a new subdivision, local government officials must realize that their expenditures will likely rise more than their revenues, resulting in a budget shortfall unless millage rates are increased. In Union County, the conversion of farmland to houses will worsen the financial condition of the county government slightly if the new homes have an average value below break-even value of \$121,442, but will have an especially large and negative impact on the school system's finances. Schools are very expensive and only very high priced homes can come close to generating enough school-collected revenue to support even one child per household. New homes built in Union County may well exceed the county's break-even value, but there is little hope that they will have high enough average values to cover the accompanying educational costs.

Further, COCS studies confirm that programs which reduce property tax burdens on farm and forestland as a mechanism to encourage farm and forestland preservation are equitable and serve only to bring the tax burden more in line with the cost of servicing that property. Farm and forestland may not generate an impressive looking tax base, but neither do they create a large demand for government services.

The findings of COCS studies should be carefully evaluated in light of the changing character of these rural counties. COCS studies should not be used to promote one land use type over another without a careful and full understanding of their limitations. They use average revenues and expenditures and may not reflect the costs and revenue of a particular development project. They do, however, make clear that residential development alone is not a rational economic development strategy. Rural communities must ensure that their development is balanced with enough commercial and industrial development to "support" residential development that does not generate enough local government revenues to cover the expenditures it requires.

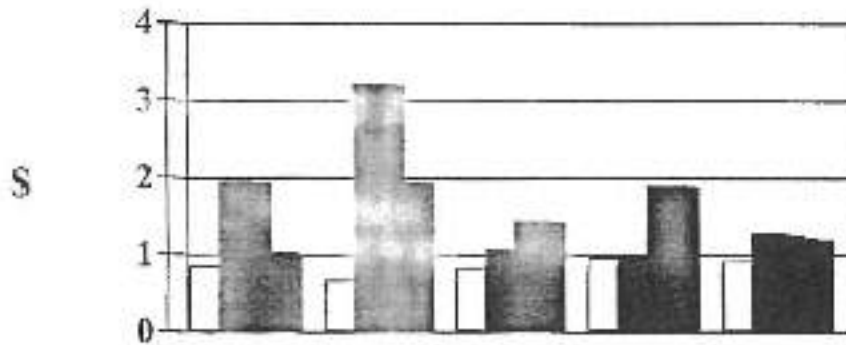
References

- American Farmland Trust (1992). *Does Farmland Protection Pay? The Cost of Community Services in Three Massachusetts Towns*. The Massachusetts Department of Food and Agriculture.
- American Farmland Trust, (1993). *Is Farmland Protection A Community Investment? How to Do a Cost of Community Services Study*. (Washington, DC: American Farmland Trust).

Appendix - Results From Other Studies in Georgia

Figure 4.

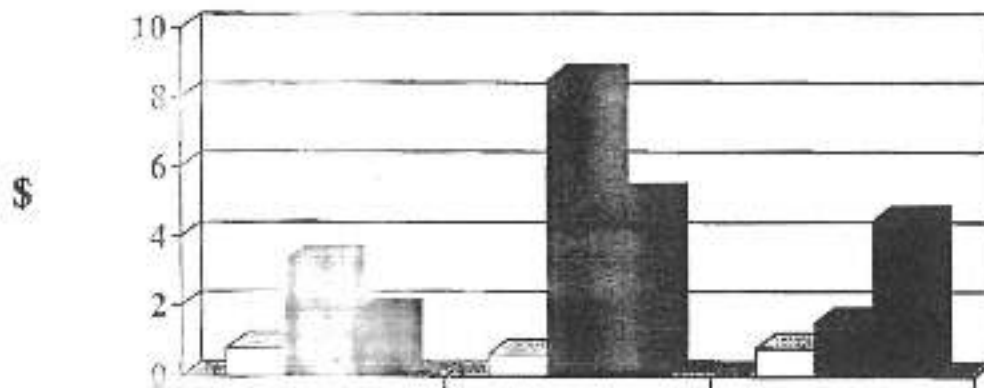
Revenues per \$1 in Expenditures by Land Use
(County Government Only)



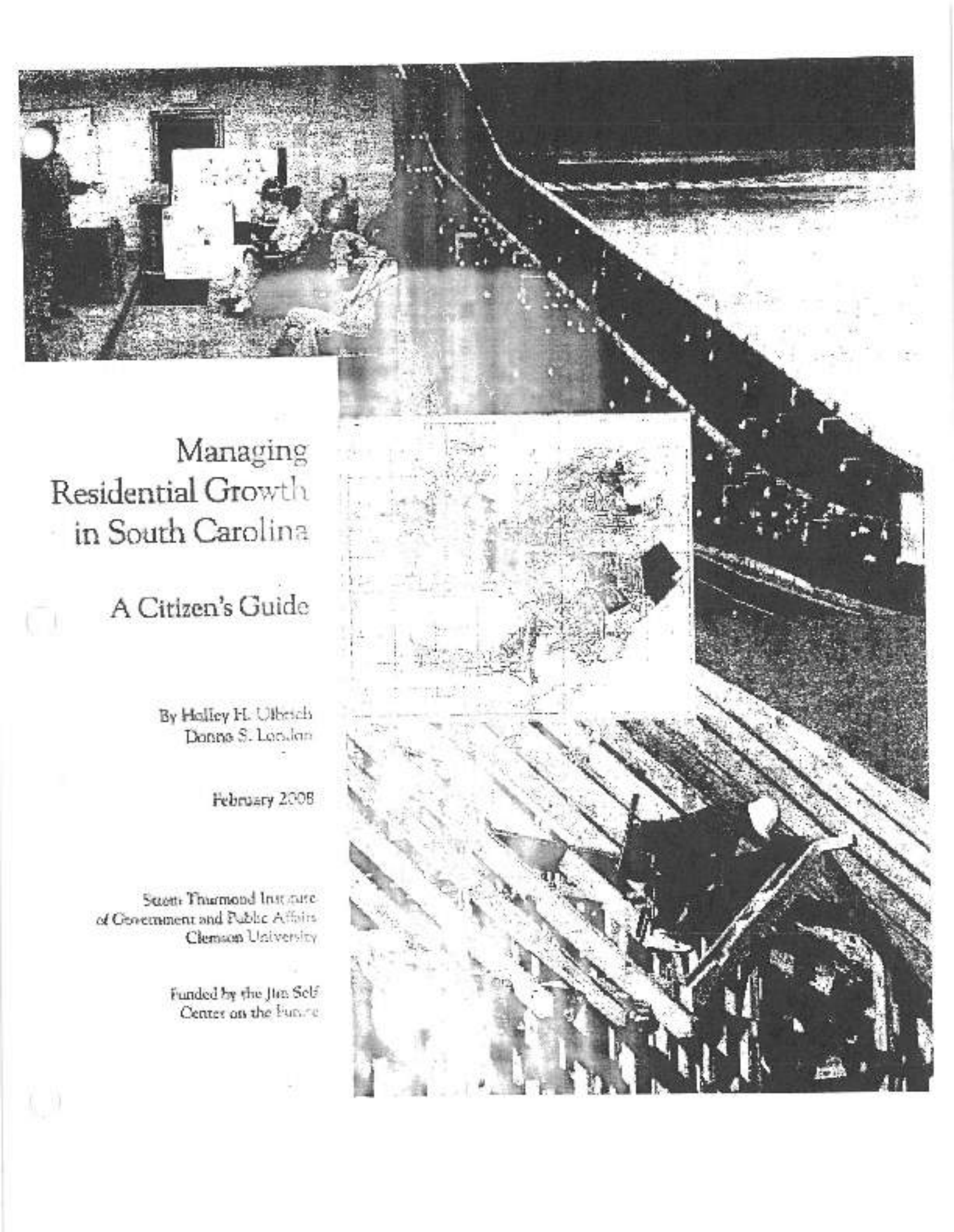
	Carroll	Cherokee	Habersham	Hall	Oconee
□ Residential	.83	.64	0.81	0.95	0.9
■ Comm/Ind	1.93	3.19	1.04	0.95	1.25
■ Farm/Forest	1.01	1.92	1.42	1.87	1.18

Figure 5.

Revenues per \$1 in Expenditures by Land Use
(County Government Plus Schools)



	Carroll	Cherokee	Hall
□ Residential	0.79	0.63	0.8
■ Comm/Ind	3.32	8.5	1.52
■ Farm/Forest	1.75	5.1	4.47



Managing Residential Growth in South Carolina

A Citizen's Guide

By Halley H. Ulbrich
Doris S. London

February 2008

Strom Thurmond Institute
of Government and Public Affairs
Clemson University

Funded by the Jim Self
Center on the Future

Managing Residential Growth in South Carolina

A Citizen's Guide

By

Holley H. Ulbrich
Donna S. London

February 2008

Strom Thurmond Institute of Government and Public Affairs
Clemson University

Funded by the Jim Self Center on the Future

Contents

Residential Growth in South Carolina	2
Benefits of Residential Growth	4
Costs of Residential Growth	6
Providing Infrastructure for New Development	8
Impact of Residential Development on Local Public Revenue and Services	10
General Fiscal Growth Management Tools	12
Other Growth Management Tools	14
What Can a Citizen Do?	18

About the Authors

Dr. Ulbrich is Alumni Professor Emerita of Economics at Clemson University and Senior Fellow of the Strom Thurmond Institute. She has consulted extensively on tax policy and revenue sharing to government agencies, including the General Assembly and the SC Department of Education.

Donna London is Director of the Jim Salf Center on the Future, focusing on citizen input and growth management projects that intersect planning, development, and environmental preservation. She also hosts a regular radio segment on SCETV's *Year Days*.

The views presented here are not necessarily those of the Strom Thurmond Institute of Government and Public Affairs or of Clemson University. The Institute sponsors research and public service programs to enhance civic awareness of public policy issues and improve the quality of national, state, and local government. The Institute, a public service activity of Clemson University, is a nonprofit, nonpartisan, tax-exempt public policy research organization.

Managing Residential Growth in South Carolina: A Citizen's Guide

South Carolina has been experiencing rapid growth, particularly residential growth, in many parts of the state. Although the overall growth is only a little higher than the national average, it is heavily concentrated in just nine counties on the coast, in the Midlands and near Charlotte. Those high-growth areas are experiencing some problems in accommodating growth while maintaining quality of life and providing infrastructure and public services to new residents.

This Citizen's Guide is based on a longer paper entitled "A Growth Policy for the 21st Century in South Carolina" that is available on the Strom Thurmond Institute web site (www.strom.clemson.edu). That paper was the result of a series of roundtable discussions in rapidly growing areas of South Carolina in 2007 that were convened to address the benefits and challenges of rapid residential growth. The original project was supported by a grant from the Office of the Vice President for Public Service and Agriculture at Clemson University. Funding for this Guide, targeted to the general public, is provided by the Jim Self Center on the Future at Clemson University's Strom Thurmond Institute.

Residential Growth in South Carolina

All three kinds of growth—residential, industrial, and commercial—are important. Commercial development tends to follow residential growth in most but not all cases. Industrial development is an important but separate challenge to South Carolina citizens and policymakers. Although South Carolina has seen substantial growth in the commercial sector and somewhat slower growth in the industrial sector in recent decades, our focus in this citizen guide is on growth in residential development because of its overarching impacts on a community's quality of life and general prosperity.

Challenges

- Rapid growth in residential development presents challenges to local governments and current residents in terms of taxes and service costs, quality of life, and the local economy. Counties have land-use plans designed to make the best use of existing infrastructure, provide adequate affordable housing, and generate enough revenue to support added local public services. But they do not always have the resources and tools they need to encourage or direct growth according to the plan.

Growth Rates

- South Carolina's population grew from 3,486,703 to 4,246,933 (21.8%) from 1990 to 2005.
- The number of housing units grew from 1,424,155 to 1,927,864 (35.4%) over the same time period, considerably faster than the population. Smaller households and second homes accounted for much of the difference.
- U.S. population grew from 248,709,873 in 1990 to 288,378,137 in 2005, an increase of 15.9%. The number of housing units grew from 102,263,678 in 1990 to 124,521,886 in 2005, an increase of 21.8%.
- South Carolina was above the national average in both population growth and growth of housing units.

Patterns

- The pattern of residential development is almost as important as the rate of growth in creating opportunities and challenges for South Carolina state and local governments. How much of it is owner-occupied and how much rental? Where is it located relative to existing developments and infrastructure? How large are the lots? All of these factors influence the revenue generated and the costs of service provision and infrastructure, as well as the impact on the environment and quality of life for existing residents.
- Growth in South Carolina is very unevenly distributed. South Carolina's growth in population (and housing) is concentrated most heavily along the coast, the suburbs of Charlotte, the I-85 corridor, and the midlands around Columbia. The fastest growing large counties

(>50,000 population) in South Carolina are Dorchester, Horry, York, Beaufort (growing 2.7%-3.6% a year 2000-2006), followed by Lexington, Greenville, Kershaw, Georgetown and Richland, growing at rates from 1.4% to 1.9% a year from 2000 to 2006.

- For comparison, we also looked at the nine slowest growing large counties, all of which were gaining population at less than the state average rate of 1.2% a year from 2000 to 2006. That rate is above the national average of 1.04%.

Kinds of homes

- There are four basic types of housing: single family detached (on-site construction), condominium or townhouse, apartment, and mobile homes.
- South Carolina has consistently been just slightly above the national average in the development of traditional single family homes (61.7% in 2005 compared to a national average of 61.1%), far below the national average for condos and townhouses (2.5% versus 5.7%) and especially apartments (17.1% versus 26.1%), and far above the average in mobile homes (18.5% versus 7.0%).
- All but the single family residential types of dwellings (traditional and mobile homes) tend to be built as higher density developments, usually close to existing population centers, and are thus less costly than the typical suburban detached home to serve on a per unit basis, especially in terms of infrastructure.
- Another important distinction in South Carolina is between owner-occupied and rental units, which encompass all four types of dwellings.
- According to the 2000 Census, 72.2% of South Carolina households lived in owner-occupied homes, compared to 66.2% for the nation as a whole.
- Owner-occupied property is assessed at a lower rate than other residential property (4% versus 6%) and receives other favorable tax treatment, particularly the exemption from property taxes for school operations.

Infill or sprawl?

- There are several kinds of residential growth that have different impacts on communities.
- Both infill development and development that is close to existing population centers are less expensive to serve and encourage the development of local commercial services (shopping, restaurants, etc.) that contribute more to local government revenue.
- Developments in areas more remote from existing population centers, particularly developments on large lots, are more expensive to serve. They require more new roads, schools, and water and sewer lines but do not increase density in ways that make them easier to serve once that infrastructure is in place.
- Remote, unplanned and uncoordinated residential development on large lots is known as sprawl. Sprawl has been a typical pattern of residential development in many parts of South Carolina.

Benefits of Residential Growth

Residential growth brings diversity, jobs, and a critical mass to support and use - public amenities such as community facilities, parks and recreational programs as well as private services such as shopping, restaurants, and other home and personal services, including medical and legal services.

Diversity

- Newcomers to the state bring skills, resources, and ideas that make South Carolina a more diverse community.
- Diversity can be enriching as well as challenging—different cultures, languages, holidays, cuisines, religions, and expectations broaden our horizons but also can make it more difficult to create a viable community based on shared experiences and understanding.

Jobs

- In a study of housing in Greenville County, Carey and Becker¹ found that the construction of 65 single-family housing units (50 owner-occupied and 15 rentals) generates between 34 and 39 jobs over ten years and a \$3.8 million increase in disposable income.
- According to the National Association of Homebuilders, in the year 2005, the construction of an average detached home generated 3.47 jobs including contractors, tradesmen, manufacturers of building materials and components, distributors, haulers, architects, lenders and lawyers.
- ~~The construction of an average unit to a multifamily dwelling generated 1.29 jobs.~~
- In addition to these direct expenditures, new home construction also generates additional sales of furniture, appliances and other amenities.

Commercial development

- Fast-growth counties are better able to attract retail businesses and services, and cultural and recreation amenities as they reach the critical mass of population level and density that would support privately developed facilities and services.
- Tourism supports such services along the coast, but a simple concentration of population has created a market for these amenities in the Midlands.
- In York County, people still look to Charlotte as a cultural center as well as an employment and shopping destination.
- If there is commercial development, taxes and fees from that development will add more to local government revenue than to costs.

Critical mass for public amenities

- Public amenities such as libraries, parks and recreation facilities need a certain size and density of population in order to generate enough revenue and justify enough demand.
- Coastal counties offer extensive public cultural and recreational services because their economies are heavily dependent on tourism. In those counties, accommodations taxes help to fund cultural and recreational programs and services that benefit permanent residents as well as tourists.
- Municipalities are the major providers of such services because they have the concentration of population needed to support such programs. They are more likely than counties to use revenue sources such as hospitality taxes and local accommodations taxes to finance those services.

Costs of Residential Growth

Rapid residential growth without advanced planning often leads to traffic congestion, problems of water quality and availability, deteriorating air quality, and loss of wildlife habitat and green space. Competition for land drives up home prices, and in recent years, much of the new single family home construction has been out of the price range of the average South Carolinian. Relatively few apartments or moderate-priced homes are being built in fast-growth areas. New residential development usually costs more to serve than it generates in public revenue, an issue discussed in more detail in a later section.

Traffic congestion

- Residents of fast-growing counties have expressed concern about transportation—inadequate roads, lack of public transit, and frequent traffic jams, especially in the Midlands and York County.
- In the Midlands, new housing developments are being served by older farm-to-market roads that lack the carrying capacity to meet the higher traffic flow.
- York County is largely populated by commuters to Charlotte. The roads are inadequate to keep up with the demand, resulting in congestion, high expenses for road maintenance and repair, and problems of air quality. New highway construction tends to lag behind residential development.
- South Carolina has one of the highest proportions of state maintained roads in the nation, but its spending per mile is low compared to national and regional averages. At the same time, the infrastructure is aging and funding for maintenance is often delayed in favor of new construction because of the attraction of federal matching dollars.
- The state is highly dependent on the fuel tax to maintain roads. The gasoline tax per gallon has not increased since 1957 and there are no other substantial revenue sources earmarked for roads. As a result, the state's existing roads are deteriorating and vulnerable to unsafe conditions.

Air quality

- Ambient air quality is a problem in faster-growing areas, primarily because of the increased traffic flow on the roads. As roads become more congested, it is not merely the number of miles driven but the length of time it takes to make the journey, during which the car's engine is on even if the car is not moving.
- Due to federal regulations, low ambient air quality, a problem in both the Midlands and the Upstate, can prevent new industry from locating in those areas.
- Both air quality and water quality are also concerns in terms of attracting retirees, tourism, and commercial development.

Water quality and availability

- South Carolina has historically been a water-rich state, with ample rainfall and multiple large streams flowing through it. However, concentrated residential growth combined with several years of low rainfall has affected quality and availability, in addition to the challenge of providing the infrastructure to treat and distribute the water.
- The coastal region, which contains four of the nine fast-growth counties, is at the end of the water flow as it arrives at the sea, diminished in both quantity and quality as it has passed through North Carolina and the Upstate.
- Storm water runoff from construction sites and increased impervious surface has affected water quality because of pollution and sediments.
- Salt water intrusion into underground aquifers is a problem in some areas, particularly Beaufort County.
- With growth, pressure to build along tidal creeks, and the intrusion of pollutants from upstream have challenged the ability of the coastal counties to maintain the quality of creeks and to protect wetlands for both marine life and humans.
- Water disputes across state lines with North Carolina and Georgia, are becoming particularly contentious with growth adjacent to the state line. There are issues of water flow in the Catawba River from North Carolina and battles around the Savannah River with Georgia over both water flow and water quality.

Green space and wildlife habitat

- About 2/3 of the land in South Carolina is forested, although forest land has been subject to more rapid conversion to development in coastal counties. This share of land in forests is twice the national average.
- South Carolina ranked 9th among 50 states in the rate of conversion of prime agricultural and forest lands to development between 1992 and 1997. Newcomers in every region want parks and recreation and places to walk and hunt, but game lands are shrinking as forest lands are sold and developed.
- A sprawl-style of development with large homes on large lots generally results in loss of green space and wildlife habitat. Some habitat has been saved through public-private partnerships for conservation easements and through encouraging a shift in development from "green fields" to "brown fields" (reuse and redevelopment).
- As growing counties develop most of their available land, demand spills over to adjacent counties that may not be prepared with zoning, land use planning or other tools to manage the impact of sudden growth spurts.

Affordable housing

- Affordable housing is a challenge in most areas of the state because of rising construction costs and the low profit margins for builders of smaller homes and apartments. Rapid growth results in competition for available building sites and drives up home prices in the surrounding region.
- According to the National Low Income Housing Coalition, average rental cost for a two bedroom apartment in South Carolina in 2006 was \$615 a month, or \$7,380 a year, which would require an hourly wage of \$14.82. The median renter hourly wage was only \$9.77, or 83% of the amount needed. The nine fast growth counties were all well above that level of monthly rental cost, ranging from \$690 in Charleston County to \$803 in Beaufort County.

Providing Infrastructure for New Development

Infrastructure is public capital—roads, public buildings, schools, water and sewer systems, and other long-lasting, expensive investments in facilities needed to provide services to residents.

Cost of infrastructure

- Growth has raised questions about who should pay for the infrastructure to serve residential growth and what shares should be funded by the state and by local governments.
- The cost of infrastructure is shared between state and local governments and between current residents and taxpayers and newcomers through various funding methods.
- According to a 1999 study for northern Virginia², the capital cost of services (in 1987 dollars) for a single dwelling unit was estimated at \$18,000 for a smart growth development pattern (higher density, mixed housing types), \$35,000 for low density sprawl close to existing urban areas, and \$48,000 for low density sprawl 10 miles from existing development.
- Some 70 studies have consistently found that new residential development generated from 47% to 98% of the revenue needed to pay for the public services they required, with an average of 87%. Commercial, industrial, farm and forest property consistently generate far more revenue than costs.
- In South Carolina, owner-occupied residential property generates less revenue than rental property because they are treated differently for tax purposes.

Impact on existing property owners

- Homeowners, renters and commercial and industrial property owners who are already in the community bear some of the cost created by new residential development.²

ment does not pay the full cost of the infrastructure and services that are needed to provide basic public services, including education, public safety, transportation including roads, solid waste disposal, water and sewer service, and parks, recreation and culture.

- To the extent that infrastructure is financed by issuing bonds that are paid for out of property taxes or other local revenues, the cost is shared between new and existing development. To the extent that infrastructure is paid for through voluntary development agreements and/or impact fees (described below), a larger share of the cost falls on new residential development.

Role of the state

- In many states, state aid for infrastructure is not only a helpful financial resource but also a useful tool for encouraging better and more far-sighted growth management by counties and municipalities. Such aid can be linked to planning criteria that ensures higher density and better preservation of open space.
- South Carolina does not provide systematic, large-scale aid for infrastructure development, but does provide some funds for highway maintenance and construction and helps intermittently with school construction and infrastructure loans.

Role of local governments

- Local governments (municipalities, counties, and school boards) finance a significant amount of infrastructure for new development. All three have the power to borrow subject to constitutional limits in order to finance capital spending (no more than 8% of assessed valuation).
- Local governments can use general obligation bonds to fund public projects such as schools, city halls, public parks and other facilities that do not generate revenue in any significant amount.
- Revenue bonds, which are not subject to such strict limits on the amount issued, can be used to fund local projects that have a dedicated revenue source, such as a parking garage or a public recreation facility. Some counties and municipalities are able to finance facilities with revenue bonds by pledging revenue from a hospitality tax or other designated source.
- Schools are financed by bonds with a designated willage for debt service, subject to the same constitutional limits as cities and counties.

Impact of Residential Development on Local Public Revenue and Services

- New infrastructure required to serve new residential development creates ongoing operating and maintenance costs in addition to the initial cost of construction. New schools need teachers, office staff, supplies, janitors, and heating and cooling. Roads must be maintained and patrolled. Fire stations need trucks and firefighters. Police stations need officers and dispatchers. Libraries need books and librarians. So there is an ongoing public operating expense associated with each new home in addition to the "start-up" cost of new public infrastructure.
- The total city and county revenue per household from local taxes and fees and state aid based on population was about \$1,600-\$1,700 (less for elderly and disabled) at 2006 tax rates.

Local property tax revenue

- With the change in the property tax law in 2006 (Act 385), owner-occupied residential property still contributes to debt service for school construction but does not pay any taxes for school operations. By substituting a sales tax for a portion of the property tax, the state is funding a larger share of the cost of education, but the rest of the burden of paying for school operations falls on other kinds of property—commercial and rental property, industrial and utility property, vacant land and motor vehicles.
- The average combined property tax rate for counties and municipalities was 129.4 mills in 2006 in South Carolina. Owner-occupied residential property is assessed at 4% of market value. A \$200,000 house would be assessed at \$8,000 and pay \$1,032 in city and county property taxes (unless the homeowner is elderly or disabled, in which case the tax would be \$774).

Other revenue sources

Twenty-nine counties have a local option sales tax, usually 1%, that generates approximately \$300 per household. Much of that revenue is used to fund property tax relief, so only a small amount goes toward paying for public services.

- The state provides population-based aid of about \$220 per household and assorted fees and charges and minor taxes (such as hospitality taxes) generate approximately \$150 more per household.
- In states where local governments have access to other fiscal tools, such as income or payroll taxes, sales taxes or vehicle fees, the cost of the new infrastructure is shared more evenly among all taxpayers, households and business firms, new and existing. The increasing use

of local government fees (in addition to impact fees) absorbs some of the cost of servicing new households, although many of those fees are earmarked for specific services such as solid waste removal or recreation.

Cost of providing services

- Total expenditures by cities and counties in South Carolina average about \$1,000 per person in 2006, or \$2,300 per household. A household with a \$200,000 home is paying about 70-75% of the cost of its share of municipal and county services.
- School operating costs are paid by the state and by property taxes on non-owner-occupied property.
- It costs about the same to provide services to a single-family home regardless of size. Larger homes get the same garbage pickup, the same police protection, and the same amount of road maintenance as a smaller home. As a result, larger and more expensive homes pay more taxes relative to the services that they receive than smaller and less expensive homes. So the fiscal impact (taxes and fees paid minus additional service costs) will be more positive, or less negative, for a large home than a smaller home in the same general area and on about the same size lot.

General Fiscal Growth Management Tools

General fiscal tools for growth management include property taxes, special purpose local sales taxes, and fees and charges.

Taxes

- Property taxes have historically been the major revenue source for local governments, because they are a payment for services such as roads, schools, public safety, and solid waste management. However, the property tax in South Carolina and many other states does not generate enough revenue from new residential development to cover the cost of additional infrastructure and services needed by these new homes.
- Property taxes cannot be tailored to the kind of development that citizens and local governments may want to encourage or discourage.
- Counties in South Carolina are allowed to adopt special local option sales taxes by referendum for school and county capital projects and transportation at rates of 1 to 2 percent. The projects must be specified in the referendum and the tax expires as soon as the projects have been paid for. This tax is a way of paying for infrastructure that does not rely on the property tax.

Fees and charges

- Fees and charges play an important role in relieving the burden on the property tax in funding local government and assigning more of the cost of services to those who choose to use them.
- Fees for solid waste collection and disposal, use of recreation facilities, and parking charges are among the many ways that local government charge for services.
- Water and sewer charges (and other utilities provided by some cities, such as electricity and natural gas) recoup much of the cost of service including maintenance and repair on the lines and treatment plants.
- Some cities provide services to extrajurisdictional customers and charge differential rates in order to reduce the burden on city residents and also to encourage annexation.

Targeted fiscal growth management tools

Some fiscal tools are more directly tied to the kind and cost of new development. These targeted tools include purchase of development rights, tax increment financing, impact fees, and voluntary development agreements.

Purchase or transfer of development rights

- In purchase of development rights programs, a local government purchases the right to develop land from a property owner while the owner retains title to the property. This tool has come into widespread use around the country as a method of preserving farmland and significant properties.
- Beaufort County has used this tool since 2000 to conserve properties of significant environmental value. Working with the Trust for Public Land to identify and evaluate such properties, the county has used a variety of strategies, including encouraging donations, conservation easements, or sale of property to the county for below market value, but has also made some purchases of conservation easements.
- Transfer of development rights are gaining traction as a growth management tool. With transfer of development rights, the local government designates receiving areas where growth can be accommodated and sending areas where growth is discouraged. Developers are allowed to purchase the ability to develop in the sending (discouraged) area and to use that development potential (increased density) in the receiving area.

Tax increment financing

- Tax increment financing (TIF) is used primarily for commercial (and sometimes industrial) development to put the burden of financing new infrastructure needs on those who create the demand. Residential development is often but not always a part of a TIF. A TIF agreement requires the consent of all affected local governments.
- In a TIF, the property in the designated area is assessed prior to development, the local (usually municipal) government then puts in the necessary infrastructure, and as development occurs, the property is reassessed and all of the additional revenue from the increased property value is dedicated to paying off the infrastructure improvements. Once improvements are paid for, the property tax revenue is again distributed in the normal fashion to cities, counties and school districts.

Impact fees

- Impact fees are one of the most widely used growth management tools nationally, especially to cover some of the infrastructure costs of growth. Although impact fees rarely are sufficient to cover the actual capital costs of new residential construction, they at least reduce the amount of the burden that is shifted to existing residents by paying for infrastructure with bonds that are repaid through the property tax.
- Impact fees are usually a simple flat fee per unit, regardless of distance and density considerations that affect the differential cost of infrastructure and service.
- In South Carolina, restrictions on the amount and terms of use of impact fees have made them a somewhat ineffective tool for growth management, especially in counties.

Development agreements

- Because the use of impact fees is so restricted under state law in South Carolina, counties and cities have turned to "voluntary" development agreements as an alternative way to impose at least part of the cost of added infrastructure on those who create the demand. Such agreements are negotiated between the developer and the county or municipality. They are widely used in growing areas of the state.
- Voluntary agreements can be tailored to the specific needs and preferences of the developer in terms of what infrastructure they agree to provide and pay for.
- Such agreements allow local governments to encourage certain kinds of developments based on the differential cost of providing infrastructure and services to residential property of differing densities and distance from existing infrastructure.
- Like impact fees, voluntary development agreements reduce the extent to which the cost of providing infrastructure to new development is shifted to existing residents and taxpayers.

Other Growth Management Tools

South Carolina is diverse in population density, resource bases, and growth patterns. Consequently, individual counties and municipalities need to have a variety of growth management tools to respond to their particular growth challenges and opportunities. These tools include state and federal regulations, comprehensive planning, and development ordinances, zoning and other land use regulation, priority investment areas, annexation, and regional coordination.

Federal/state environmental regulations

- While community planning and land use regulations are locally based, certain state and federal regulations affect growth management in South Carolina. Generally, these state and federal tools address environmental impacts, options for land conservation, or procedural requirements for planning and regulating growth.
- State and federal regulation of air and water quality plays a significant role in where growth will occur, particularly in areas where air quality is already at or above ambient air standards and water quality is threatened by industrial discharges.
- Air quality issues are important in parts of the upstate including York County and in Greenville, Spartanburg, and Anderson Counties, and also in the Midlands including Richland and Lexington Counties. The areas that are currently not in compliance with federal standards have air quality issues that result not only from industrial activity but also from vehicle emissions related to population growth and traffic congestion. Water quality issues are significant throughout the state particularly along the coast and upland streams affected by low stream flow. The air and water quality compliance requirements potentially can limit development.

Comprehensive planning

- Comprehensive planning is mandated by the Local Government Comprehensive Planning Enabling Act of 1994 if a county or municipality is engaged in regulating land use or land development activity. A comprehensive plan is a written document, prepared by a local government with citizen input that creates a framework for future development patterns. Based on the community's input, the plan describes and strategizes the means to reach a city or county's preferred path of development.
- The comprehensive plan is particularly important in managing growth so that local governments are aware of and prepared to meet the demands of a growing population. Roads, schools, water and sewer, public safety, and recreation are a few of the public services that should be addressed.
- A comprehensive plan that addresses physical development in relation to community needs and resources is necessary to successfully manage anticipated growth and its impacts.
- Important elements of a comprehensive plan are population, land use, economic development, natural resources, housing, community facilities and public services, transportation, and priority investment areas. In each element, public participation and a regional perspective must be addressed.
- Land use plans need to be flexible to accommodate change, but firm enough to support and instill the need to protect green space, discourage unmanaged growth, and ensure housing affordability for all elements of the community.
- While the plan must be adopted by ordinance, it has no regulatory power. Other tools must be adopted to implement the plan.

Land development ordinances

- Land development regulations govern the conversion of raw land into subdivided lots. Some communities refer to land development regulations as subdivision regulations.
- These regulations are intended to address the public services that will be needed to accommodate the land's potential development. Components frequently include site design, street layout, water and sewer service provision, and other land conversion and development activities.
- State law requires that land subdivisions are recorded by the county in which the property is situated thereby providing an opportunity for government review to ensure that the necessary improvements are in place.
- City and county councils may adopt land development regulations when the community facilities element of a comprehensive plan has been adopted.

Zoning and other land use regulation

- Land use regulation influences the development of a local jurisdiction by channeling growth to areas where services are in place or planned and where other conditions are supportive. These regulations address such issues as property values, economic development potential, safety and overcrowding, design standards, a mix of land uses, nuisances or other uses that do not meet with the community's long range vision that was established during the comprehensive planning process.
- A standard zoning ordinance consists of text and a map that has the jurisdiction divided into districts. In each district, the ordinance designates the allowable uses (single family residential, commercial, industrial, multi-family, etc.), setbacks, lot sizes, buffering from adjacent uses, and other requirements governing parking, signage and landscaping.
- In recent years, more flexible zoning tools have become more widely used including overlay zones, performance zoning, incentive based standards, cluster zoning, and planned developments.
- For unusual circumstances, exceptions to zoning or land use ordinances are sometimes granted by the Board of Appeals in the form of a special exception or a variance.
- Ordinances must be backed by and compatible with an underlying land use element of the comprehensive plan.

Priority investment areas

- The Priority Investment Act (2537) targets public investments for infrastructure and facilities to particular locations. The Act requires more intentional coordination among local governments. While similar strategies have been more widely used in other parts of the country, historically they have not been common in South Carolina.
- The urban growth boundary agreement between the city of Charleston and the Charleston Water System adopted to retain Johns Island's rural character is based on the concept of priority investment areas. A line was drawn around an urban area within which the local government encourages development over a specified time period by allowing greater density and location near existing infrastructure to minimize the fiscal impact of new development.

Conservation easements

- Conservation easements are useful tools to manage environmentally sensitive or other special areas.
- Easements are legally binding agreements and generally require that the land will remain in its existing natural state or as set forth in the legal documentation.
- Easements are monitored to ensure compliance with the legal agreement.

Annexation

- An annexation plan and policy provides local governments with a sense of future public service needs if a municipality decides to increase its boundaries.
- While South Carolina annexation law is highly restrictive, the ability to annex is important for fiscal and land compatibility reasons.
- Annexation policy is frequently included in the comprehensive plan, setting priorities concerning geographic areas for annexation, and assessing the balance between added burdens to resident taxpayers and long-term benefits.

Regional coordination

- South Carolina has a regional planning structure in place. Local governments are served by ten regional councils of government that provide technical support and coordination, especially in planning and in infrastructure development.
- Many participants in the growth management roundtables called for a larger and more defined role for councils of government in coordinating among counties and cities for the provision of infrastructure as well as better management of the growth process.

What Can a Citizen Do?

- Many policy decisions about growth management are made at the state level, where legislators need to hear from interested citizens about what powers and restrictions they want local governments to have in managing growth.
- Residents and stakeholders in fast-growth counties express a need to empower local governments with a variety of tools that would make it possible for them to distribute the burden of paying for infrastructure and public services fairly among existing and new residents.
- High-growth counties are also seeking more flexibility in the use of existing revenue sources, such as local option sales taxes, accommodations taxes, and hospitality taxes. Flexibility would enable local governments to shift resources to where they are most needed and relieve the local property tax of some of the burden of paying for infrastructure and/or services for new residents.
- Specific proposals that could be considered by state legislators include more flexibility in the level and use of impact fees and the addition of school impact fees, along with more state aid for school construction.
- Local governments have multiple agencies that are involved in the process of managing growth. Cities and counties usually have a Planning Commission and Board of Zoning Appeals. Some communities have a Board of Architectural Review. City and county councils appoint the boards and commission members. Any interested citizen can apply to serve.
- When the land use plan is revised, local governments hold meetings and hearings to generate citizen input. Citizens can take advantage of these meetings to attend and participate.
- When there is a proposed change in the zoning ordinance, including a variance or special exception, a public hearing must be held and affected parties (primarily neighbors) must be notified.
- Annexation can play an important role in managing the size, type, and costs of growth of cities. Citizens can make their views known to city council about whether or not to annex and whether and how the annexation will benefit the city.
- All of these local decision procedures offer opportunities for citizens to help shape the pattern of growth in their city or county so as to provide a better quality of life and apportion the cost of growth fairly among the various stakeholders.

Footnotes

1. Carey, Robert T. and Robert H. Decker, July 2007, *A Prediction of Economic and Fiscal Impacts of the Greenville Housing Fund (Draft II)*, Regional Center for Economic Analysis, University of Oklahoma, Oklahoma University Research Foundation, and the Steven Thornburg Institute.

2. Sierra Club, September 1997, *Spreading Costs: A Report*, Sierra Club Report authored by James Pelley and Glenn Bass, Annapolis, MD.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

Annual Report Under Section 13 or 15(d) of The Securities Exchange Act of 1934

For The Fiscal Year December 31, 2009

Commission file number: 333-117053

CommunitySouth Financial Corporation

(Exact name of registrant as specified in its charter)

South Carolina
(State or other jurisdiction of
incorporation or organization)

20-0934786
(I.R.S. Employer Identification
No.)

6602 Calhoun Memorial Highway
Easley, South Carolina
(Address of principal executive offices)

29640
(Zip Code)

Issuer's telephone number: (864) 386-2540

Securities registered pursuant to Section 12(b) of the Exchange Act: None

Securities registered pursuant to Section 12(g) of the Exchange Act: **Common Stock**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act of 1934 during the past 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark if disclosure of delinquent filings pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statement incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer
Non-accelerated filer
(Do not check if a smaller reporting company)

Accelerated filer
Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes No

The estimated aggregate market value of the Common Stock held by non-affiliates (shareholders holding less than 5% of an outstanding class of stock, excluding directors and officers) of the registrant, as of June 30, 2009 was \$7,225,843.

The number of shares outstanding of the registrant's common stock, as of February 18, 2010 was 4,698,697.

DOCUMENTS INCORPORATED BY REFERENCE

Proxy Statement for the Annual Meeting of Shareholders
to be held on May 18, 2010

Part III (Portions of Items 9-14)

Transitional Small Business Disclosure Format, (Check one): Yes No

Item 1. Description of Business.

This Report, including information included or incorporated by reference in this document, contains statements which constitute forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. These statements are based on many assumptions and estimates and are not guarantees of future performance. Our actual results may differ materially from those anticipated in any forward-looking statements, as they will depend on many factors about which we are unsure, including many factors which are beyond our control. The words "may," "would," "could," "will," "expect," "anticipate," "believe," "intend," "plan," and "estimate," as well as similar expressions, are meant to identify such forward-looking statements. Potential risks and uncertainties that could cause our actual results to differ from those anticipated in any forward-looking statements include, but are not limited to, those described below under Item 1A- Risk Factors and the following:

- our efforts to raise capital or otherwise increase our regulatory capital ratios;
- the effects of our efforts to raise capital on our balance sheet, liquidity, capital, and profitability;
- our ability to retain our existing customers, including our deposit relationships;
- our ability to comply with the terms of the Consent Order and the Memorandum of Understanding between the Bank and its supervisory authorities within the timeframes specified;
- the rate of delinquencies and amounts of loans charged-off;
- our rapid growth through 2008 and short operating history;
- reduced earnings due to higher credit losses generally and specifically because losses in the sectors of our loan portfolio secured by real estate are greater than expected due to economic factors, including declining real estate values, decreasing interest rates, increasing unemployment, or changes in payment behavior or other factors;
- reduced earnings due to higher credit losses because our loans are concentrated by loan type, industry segment, borrower type, or location of the borrower or collateral;
- the amount of our real estate based loans, and the weakness in the commercial real estate market;
- our reliance on available secondary funding sources such as Federal Reserve Bank discount window borrowings, sales of securities and loans, and secured federal funds lines of credit, from correspondent banks, to meet our liquidity needs;
- significant increases in competitive pressure in the banking and financial services industries;
- changes in the interest rate environment which could reduce anticipated or actual margins;
- changes in political conditions or the legislative or regulatory environment;
- general economic conditions, either nationally or regionally and especially in our primary service area, becoming less favorable than expected resulting in, among other things, a deterioration in credit quality;
- changes occurring in business conditions and inflation;
- changes in technology;
- changes in deposits flows;
- changes in monetary and tax policies;
- the lack of seasoning of our loan portfolio, especially given our rapid loan growth through 2008;
- adequacy of the level of our allowance for credit losses;
- increased funding costs due to market illiquidity, increased competition for funding, and/or regulatory requirements;
- adverse changes in asset quality and resulting or potential collateral losses and expenses, including the risk of further impairment to the value of our collateral or loans for which we have not yet taken specific reserves;
- loss of consumer confidence and economic disruption resulting from terrorist activities or other military actions;
- changes in the securities markets, and
- other risks and uncertainties detailed from time to time in our filings with the Securities and Exchange Commission (the "SEC").

We have based our forward-looking statements on our current expectations about future events. Although we believe that the expectations reflected in our forward-looking statements are reasonable, we cannot guarantee you that these expectations will be achieved. We undertake no obligation to publicly update or otherwise revise any forward-looking statements, whether as a result of new information, future events, or otherwise.

These risks are exacerbated by the recent developments in national and international financial markets, and we are unable to predict what impact these uncertain market conditions will have on us. During 2008 and 2009, the capital and credit markets experienced extended volatility and disruption. There can be no assurance that these unprecedented recent developments will not continue to materially and adversely impact our business, financial condition, and results of operations, as well as our ability to raise capital or other funding for liquidity and business purposes.

General

CommunitySouth Financial Corporation (the "Company") was incorporated in South Carolina in March 2004 for purposes of operating as a bank holding company. Our wholly-owned subsidiary, CommunitySouth Bank and Trust (the "Bank"), commenced business on January 18, 2005, and is primarily engaged in the business of accepting savings, demand, and time deposits and providing mortgage, consumer and commercial loans to the general public.

Marketing Focus

Most of the banks in Anderson, Greenville, Pickens and Spartanburg Counties are now local branches of large regional banks. Although size gives the larger banks certain advantages in competing for business from large corporations, including higher lending limits and the ability to offer services in all of South Carolina, we believe we have a niche in the community banking market in our market area. As a result, we generally do not attempt to compete for the banking relationships of large corporations, but concentrate our efforts on small- to medium-sized businesses and professional concerns. The Bank advertises to emphasize the Company's local ownership, community bank nature, and ability to provide more personalized service than its competition.

Location and Service Area

Our main office is located at 6602 Calhoun Memorial Highway, Easley, South Carolina 29640. Our telephone number is (864) 306-2540. Our site is approximately 1.2 acres in size, and the building is approximately 10,000 square feet. We have five full service branch sites in addition to the main office. The branch sites are in the towns of Anderson, Greenville, Greer, Mauldin and Spartanburg, South Carolina. Our full service branches service the entire upstate of South Carolina, which we refer to as the "Upstate," but primarily the counties of Anderson, Greenville, Pickens and Spartanburg. The Upstate is generally the northwest portion of South Carolina along the I-85 corridor between Atlanta, Georgia and Charlotte, North Carolina.

Like much of the Upstate, Pickens County's primary source of economic growth is manufacturing. With its access to applied automobile materials research and technology at Clemson University and location in the automobile hub of the southeast, the area is also developing a reputation among leaders in the automobile industry. Major employers in the area include Clemson University, Pickens County Schools, and Palmetto Health Alliance.

Anderson County is located along the I-85 corridor west of Pickens County. Significant industries in Anderson include manufacturers of automotive products, plastics, metal products, industrial machinery, publishing and textiles.

Greenville County is located east of Pickens County and is South Carolina's most populous county with over 407,000 residents. Greenville is also one of the state's wealthiest counties, with a per capita income of \$30,814 in 2005, compared to the state average of \$27,185. Greenville County is the home to more corporate headquarters than any other region in South Carolina.

Spartanburg County is also located east of Greenville County and has an economic history rooted in agriculture and textiles. BMW Manufacturing Corporation calls Spartanburg home. It began its assembly operation in Spartanburg in 1994. The amenities and opportunities Spartanburg County offers are wide-ranging from housing, education, healthcare, shopping, recreation, and culture. We believe these factors make the quality of life in the area attractive. Additionally, Spartanburg's mild climate and location and access to the mountains, the coast, and larger cities such as Atlanta and Charlotte add to the attractiveness of the area.

However, the Upstate has been negatively affected by the economic challenges of the past two years. Unemployment has been rising in our markets and property values have declined. Unemployment rates at November 30, 2009 for the following counties were Greenville, 10.5%; Spartanburg, 17.5%; Anderson, 12.7%; and Laurens, 17.0%. The average state unemployment rate for South Carolina at November 30, 2009 was 12.3% compared to 10.0% for the United States. Continued higher levels of unemployment will continue to impact credit quality. As a result, we are spending significant time on credit solutions for our customers and managing and disposing of other real estate owned as effectively as possible. The weakening in the state and local economies has also negatively affected our ability to generate local deposits.

Our Current Business Strategy

As a result of this weakening in the local economy and its effect on us, we are currently focusing our efforts in the following areas:

- increasing and strengthening our capital position;
- decreasing concentrations in our loan portfolio;
- reducing operating expenses;
- enhancing funds management and liquidity; and
- enhancing our bank's relationship culture.

For a more detailed description of our business strategy, see Management's Discussion and Analysis of Financial Condition and Results of Operation under the subsection entitled Current Business Strategy.

Lending Activities

Presented below are our general lending activities. However, due to the Bank's efforts to restructure the balance sheet, during 2009 the Bank strictly limited any new lending.

General. We emphasize a range of lending services, including real estate, commercial, and equity-line and consumer loans to individuals, small- to medium-sized businesses, and professional concerns that are located in or conduct a substantial portion of their business in our Bank's market area.

Real Estate Loans. A significant portion of our loan portfolio is secured by real estate. As of December 31, 2009, approximately 90.3% of our loans had real estate as the primary or secondary component of collateral. Real estate loans generally fall into one of three categories: construction real estate loans, mortgage loans, or acquisition and development (A&D) loans. Each of these categories is discussed in more detail below, including their specific risks. Interest rates for all categories may be fixed or adjustable. We generally charge an origination fee for each loan. Since January 2009, we have effectively ceased making any new commercial real estate loans and we are decreasing the existing level of these loans. Savings on the normal side of real estate by borrowers and by encouraging borrowers who are not full relationship clients of the Bank to seek other financing when their loans mature.

Real estate loans are subject to the same general risks as other loans. Real estate loans are also sensitive to fluctuations in the value of the real estate securing the loan. The real estate collateral in each case provides an alternate source of repayment in the event of default by the borrower and may deteriorate in value during the time the credit is extended. The recent downturn in the real estate market has resulted in increased loan delinquencies, defaults and foreclosures, primarily in our residential real estate construction and development portfolio. These loans carry a higher degree of risk than long-term financing of existing real estate since repayment is dependent on the ultimate completion of a project or home and usually on the sale of the property or placement of a sale. Slow housing conditions have affected some of these borrowers' ability to sell the completed projects in a timely manner and we believe that these trends are likely to continue. In some cases, this downturn has resulted in a significant impairment to the value of the collateral and our ability to sell the collateral upon foreclosure. If real estate values continue to decline, it is also possible that we will be required to increase our allowance for loan losses. If, during a period of reduced real estate values, we are required to liquidate the property collateralizing a loan to satisfy the debt or to increase the allowance for loan losses, it could materially reduce our profitability and adversely affect our financial condition.

On first and second mortgage loans, we generally do not advance more than regulatory limits. We require a valid mortgage lien on all real property loans along with a title lien policy which assures the validity and priority of the lien. We also require borrowers to obtain hazard insurance policies and flood insurance, if applicable. Additionally, certain types of real estate loans have specific risk characteristics that vary according to the collateral type securing the loan and the terms and repayment sources for the loan.

We have the ability to originate secured real estate loans for sale into the secondary market. We can limit our interest rate and credit risk on these loans by locking the interest rate for each loan with the secondary investor and receiving the investor's underwriting approval prior to originating the loan.

- **Real Estate Loans - Mortgage.** Mortgage real estate loans generally have terms of five years or less, although payments may be structured on a longer amortization basis. Inherent in mortgage real estate loans' credit risk is the risk that the primary source of repayment, the operating commercial real estate company or residential borrower, will be unable to service the debt. If a real estate loan is in default, we also run the risk that the value of the real estate securing the loan will decrease, and thereby be insufficient to satisfy the loan. To mitigate these risks, we evaluate each borrower on an individual basis and attempt to determine their business risks and credit profile. We attempt to reduce credit risk in the real estate portfolio by emphasizing loans on owner-occupied office/residential and retail buildings where the loan-to-value ratio is established by independent appraisals. We typically review the personal financial statements of the principal owners/borrower and require their personal guarantees. These reviews often reveal secondary sources of payment and liquidity to support a loan request.
- **Real Estate Loans - Construction.** We have made adjustable and fixed rate residential and commercial construction loans to builders and developers and to consumers who wish to build their own home. The term of construction and development loans generally is limited to 18 months, although payments may be structured on a longer amortization basis. Most loans mature and require payment in full upon the sale of the property. Construction loans generally carry a higher degree of risk than long term financing of existing properties. Repayment mainly depends on the ultimate completion of the project within cost estimates and on the sale of the property. Specific risks include:
 - cost overruns;
 - mismanaged construction;
 - inferior or improper construction techniques;
 - economic changes or downturns during construction;
 - a downturn in the real estate market;
 - rising interest rates which may depress sale of the property; and
 - failure to sell completed projects in a timely manner.

We attempt to reduce risk by obtaining personal guarantees where possible, and by keeping the loan-to-value ratio of the completed project below specified percentages. We also reduce risk by selling participations in larger loans to other institutions when possible.

- **Real Estate Loans — Acquisitions and Development.** A significant portion of our real estate loan portfolio is considered A&D loans, most of these are properties located in the Upstate of South Carolina and Western North Carolina. A&D loans are typically comprised of loans to borrowers for land intended to be developed (into properties such as sub-divisions or spec houses) and contain all of the risk and risk mitigation factors described for mortgages and construction loans above. These loans are generally repaid with the proceeds from the sale of the developed property.

Commercial Loans. We make loans large or small primarily in various lines of businesses. Equipment loans typically are made for a term of five years or less at fixed or variable rates, with the loan fully amortized over the term and secured by the financed equipment. Working capital loans typically have terms not exceeding one year and are usually secured by accounts receivable, inventory, or personal guarantees of the principals of the business. For loans secured by accounts receivable or inventory, principal is typically repaid as the assets securing the loan are converted into cash, and in other cases principal is due at maturity. Trade letters of credit, standby letters of credit, and foreign exchange are handled through a correspondent bank as agent for the Bank. Commercial loans primarily have risk that the primary source of repayment, the borrowing business, will be unable to service the debt. Often this occurs as the result of changes in local economic conditions or in the industry in which the borrower operates which in turn causes a flow of material value.

Consumer Loans. We make a variety of loans to individuals for personal and household purposes, including secured and unsecured installment loans and revolving lines of credit such as credit cards. Installment loans typically carry balances of less than \$50,000 and are amortized over periods up to 60 or more months. Consumer loans are typically on a single maturity basis where a specific source of repayment is available. Revolving loan products typically operate similarly to credit cards, with interest and a portion of the principal.

Consumer loans are generally considered to have greater risk than first or second mortgages on real estate because the value of the secured property may depreciate rapidly, they are often dependent on the borrower's employment status as the sole source of repayment, and some of them are unsecured. To mitigate these risks, we analyze selective underwriting criteria for each prospective borrower, which may include the borrower's employment history, income history, credit bureau reports, or debt to income ratios. If the consumer loan is secured by property, such as an automobile loan, we also attempt to offset the risk of rapid depreciation of the collateral with a shorter loan amortization period. Despite these efforts to mitigate our risks, consumer loans have a higher rate of default than real estate loans. For this reason, we attempt to reduce our loss exposure to these types of loans by limiting their sizes relative to other types of loans.

We also offer home equity loans. Our underwriting criteria for and assessment of the risks associated with home equity loans and lines of credit are generally the same as those for first mortgage loans. Home equity lines of credit typically have terms of 10 years or less, carry balances less than \$125,000, and may extend up to 90% of the available equity of each property.

We also have the ability to offer small business loans utilizing government enhancements such as the Small Business Administration's 7(a) program and SBA's 504 and "FlowDown" programs. These loans will typically be partially guaranteed by the government which may help to reduce the Bank's risk. Government enhancements of SBA loans will not exceed 80% of the loan value, and will generally be less.

Relative Risks of Loans. Each category of loan has a different level of credit risk. Real estate loans typically are generally safer than loans secured by other assets because the value of the underlying security, real estate, is generally ascertainable and ordinarily does not fluctuate as much as some other assets. However, during the current economic and real estate market downturn, this has not been the case. The fluctuation of real estate values has increased the historically low risk associated with loans collateralized by real estate. Nevertheless, certain real estate loans are less risky than others. Residential real estate loans are generally the least risky type of real estate loans, followed by commercial real estate loans and construction and development loans. The prolonged weakening in the real estate market starting in 2008 has affected all categories of our real estate loans and has resulted in decreases in real estate values and in an increase in our nonperforming loans. Commercial loans, which can be secured by real estate or other assets, or which can be unsecured, are generally more risky than real estate loans, but less risky than consumer loans. The "general and" category loans can be secured by real estate or other assets, or which can also be unsecured, are generally considered to be most risky of the categorized loans. Any type of loan which is unsecured is generally more risky than secured loans. These levels of risk are general in nature, and many factors including the creditworthiness of the borrower or the particular nature of the secured asset may cause any type of loan to be more or less risky than another. Additionally, these levels of risk are limited to an analysis of credit risk, and they do not take account of other risk factors associated with making loans such as the interest rate risk inherent in long-term, fixed rate loans.

Loan Approval and Review. Our loan approval policies apply to various levels of officer lending authority. When the amount of aggregate loans to a single borrower is not greater than a certain lending authority, the loan request is considered and approved by an officer with a higher lending limit, the management team or a member of the board of directors' loan committee. We do not make any loans to any director of the Bank unless the loan is approved by the board of directors of the Bank and is made on terms not more favorable to the person than would be available to a comparable borrower. We are a member of the Federal National Mortgage Association and Federal Home Loan Mortgage Corporation. However, we do not currently participate in either organization and we may choose to alter this policy in the future.

Lending Limits. Our lending policies are subject to a variety of lending limits imposed by federal law. In general, we are subject to a legal limit on loans to a single borrower, and the total of the loans made and unrepaid surplus. Different limits may apply based on the type of loan or the nature of the borrower. These limits will increase or decrease as the Bank's capital increases or decreases.

Banking Services

We offer a full range of deposit services that are typically available in most banks and savings and loan associations, including checking accounts, NOW accounts, certificate accounts, money market accounts, and other time deposits of various types, ranging from daily money market accounts to longer-term certificates. Both checking and certificate accounts and time certificates are tailored to our principal market area at rates competitive to other banks in the market. In addition, we offer certain retirement account services, including IRAs.

Other Banking Services

We also offer safe deposit boxes, cashier's checks, banking by mail, direct deposit of payroll and social security checks, U.S. Savings Bonds, and travelers checks. Our Bank is associated with the Star and Plus ATM networks that may be used by our customers throughout the country. We believe that by being associated with a shared network of ATMs, we will be better able to serve our customers and will be able to attract customers who are accustomed to the convenience of using ATMs. We also offer a debit card and credit card services through a correspondent bank as an agent for the Bank.

Competition

The banking business is highly competitive. We compete as a financial intermediary with other commercial banks, savings banks, credit unions, finance companies, and money market mutual funds operating in Anderson, Greenville, Pickens and Spartanburg Counties. The competition among the various financial institutions is based upon a variety of factors, including interest rates offered on deposit accounts, interest rates charged on loans, credit and service charges, the quality of services rendered, the convenience of banking facilities and, in the case of loans to large commercial borrowers, relative lending limits. In addition to banks and savings associations, we compete with other financial institutions including securities firms, insurance companies, credit unions, leasing companies and finance companies. Size gives larger banks certain advantages in competing for business from large corporations. These advantages include higher lending limits and the ability to offer services in other areas of South Carolina. As a result, we do not generally attempt to compete for the banking relationships of large corporations, but concentrate our efforts on small- to medium-sized businesses and individuals. We believe we have competed effectively in this market by offering quality and personal service.

Employees

As of December 31, 2009, we had 79 full-time employees and 13 part-time employees.

SUPERVISION AND REGULATION

Both the Company and the Bank are subject to extensive state and federal banking regulations that impose restrictions on and provide for general regulatory oversight of their operations. These laws generally are intended to protect depositors and not shareholders. The following summary is qualified by reference to the statutory and regulatory provisions discussed. Changes in applicable laws or regulations may have a material effect on our business and prospects. Our operations may be affected by legislative changes and the policies of various regulatory authorities. We cannot predict the effect that fiscal or monetary policies, economic control, or new federal or state legislation may have on our business and earnings in the future.

The following discussion is not intended to be a complete list of all the activities regulated by the banking laws or of the impact of such laws and regulations on our operations. It is intended only to briefly summarize some material provisions.

CommunitySouth Financial Corporation

We own 100% of the outstanding capital stock of the Bank, and therefore we are considered to be a bank holding company under the federal Bank Holding Company Act of 1956 (the "Bank Holding Company Act"). As a result, we are primarily subject to the supervision, examination and reporting requirements of the Board of Governors of the Federal Reserve (the "Federal Reserve") under the Bank Holding Company Act and its regulations promulgated thereunder. As a bank holding company located in South Carolina, the South Carolina Board of Financial Institutions also regulates and monitors all significant aspects of our operations.

Permitted Activities. Under the Bank Holding Company Act, a bank holding company is generally permitted to engage in, or acquire direct or indirect control of more than 5% of the voting shares of any company engaged in, the following activities:

- banking or managing or controlling banks;
- furnishing services to or performing services for our subsidiaries; and
- any activity that the Federal Reserve determines to be so closely related to banking as to be a proper incident to the business of banking.

Activities that the Federal Reserve has found to be so closely related to banking as to be a proper incident to the business of banking include:

- factoring accounts receivable;
- making, acquiring, brokering or servicing loans and usual related activities;
- leasing personal or real property;
- operating a non-bank depository institution, such as a savings association;
- trust company functions;
- financial and investment advisory activities;
- conducting discount societies or finance activities;
- underwriting and dealing in government obligations and money market instruments;
- providing specific investment advice to individuals and corporations;
- performing selected data processing services and support services;
- acting as agent or broker in selling credit life insurance and other types of insurance in connection with credit transactions; and
- performing selected insurance underwriting activities.

As a bank holding company we also can elect to be treated as a "financial holding company," which would allow us to engage in a broader array of activities. In sum, a financial holding company can engage in activities that are financial in nature or incidental or complementary to financial activities, including insurance underwriting, sales and brokerage activities, providing financial and investment advisory services, underwriting services and limited merchant banking activities. We have not sought financial holding company status, but may elect such status in the future as a business strategy. If we were to elect in writing for financial holding company status, each insured depository institution we control would have to be well capitalized, well managed and have at least a satisfactory rating under the CRA (discussed below).

The Federal Reserve has the authority to order a bank holding company or its subsidiaries to terminate any of these activities or to terminate its ownership or control of any subsidiary when it has reasonable cause to believe that the bank holding company's continued ownership, activity or control constitutes a serious risk to the financial safety, soundness or stability of it or any of its bank subsidiaries.

Change in Control. In addition, and subject to certain exceptions, the Bank Holding Company Act and the Change in Bank Control Act, together with regulations promulgated there under, require Federal Reserve approval prior to any person or company acquiring "control" of a bank holding company. Control is conclusively presumed to exist if an individual or company acquires 25% or more of any class of voting securities of a bank holding company. Following the relaxing of these restrictions by the Federal Reserve in September 2008, control will be rebuttably presumed to exist if a person acquires more than 33% of the total equity of a bank or bank holding company, of which it may own, control or have the power to vote not more than 15% of any class of voting securities.

Source of Strength. In accordance with Federal Reserve Board policy, we are expected to act as a source of financial strength to the Bank and to commit resources to support the Bank in circumstances in which we might not otherwise do so. Under the Bank Holding Company Act, the Federal Reserve Board may require a bank holding company to terminate any activity or relinquish control of a nonbank subsidiary, other than a nonbank subsidiary of a bank, upon the Federal Reserve Board's determination that such activity or control constitutes a serious risk to the financial soundness or stability of any depository institution subsidiary of the bank holding company. Further, federal bank regulatory authorities have additional discretion to require a bank holding company to divest itself of any bank or nonbank subsidiaries if the agency determines that divestiture may aid the depository institution's financial condition. Further, any loans by a bank holding company to a subsidiary bank are subordinated in right of payment to deposits and certain other indebtedness of the subsidiary bank. In the event of a bank holding company's bankruptcy, any commitment by the bank holding company to a federal bank regulatory agency to maintain the capital of a subsidiary bank at a certain level would be assumed by the bankruptcy trustee and entitled to priority payment.

Capital Requirements. The Federal Reserve Board imposes certain capital requirements on the bank holding company under the Bank Holding Company Act, including a total loan-to-asset ratio and a minimum ratio of "qualifying" capital to risk-weighted assets. These requirements are essentially the same as those that apply to banks and are described below under "CommunitySouth Bank and Trust - Capital Regulations." Subject to our capital requirements and restrictions on restrictions, we are able to borrow money to make a capital contribution to the Bank, and these loans may be repaid from dividends paid from the Bank or the Company. Our ability to pay dividends depends on the Bank's ability to pay dividends to us, which is subject to regulatory restrictions as described below in "CommunitySouth Bank and Trust—Dividends." We are also able to raise capital for contributions to the Bank by issuing securities without having to receive regulatory approval, subject to compliance with federal and state securities laws.

South Carolina State Regulations. As a South Carolina bank holding company under the South Carolina Banking and Branching Efficiency Act, we are subject to the financial review, sale or merger and to regulation by the South Carolina Board of Financial Institutions. We are not required to obtain the approval of the South Carolina Board of Financial Institutions prior to acquiring the capital stock of a national bank, but we must notify them at least 15 days prior to doing so. We must receive the South Carolina Board of Financial Institution's approval prior to engaging in the acquisition of a bank or bank holding company in another South Carolina bank holding company.

The Bank operates as a state chartered bank incorporated under the laws of the State of South Carolina and is subject to examination by the South Carolina Board of Financial Institutions. Deposits in the Bank are insured by the Federal Deposit Insurance Corporation ("FDIC") up to a maximum amount, which is currently \$100,000 for each non-retirement depositor and \$250,000 for certain retirement-account depositors. However, the FDIC has increased the coverage up to \$250,000 for each non-retirement depositor through December 31, 2013, and the Bank is participating in the FDIC's Temporary Liquidity Guarantee Program (discussed below in greater detail) which, in part, fully insures non-interest bearing transaction accounts.

The South Carolina Board of Financial Institutions and the FDIC regulate or monitor virtually all areas of the Bank's operations, including:

- security devices and procedures;
- adequacy of capitalization and loss reserves;
- loans;
- investments;
- borrowings;
- deposits;
- mergers;
- issuances of securities;
- payment of dividends;
- interest rates payable on deposits;
- interest rates or fees chargeable on loans;
- establishment of branches;
- corporate reorganizations;
- maintenance of books and records; and
- adequacy of staff training to carry on safe lending and deposit gathering practices.

The South Carolina Board of Financial Institutions requires the Bank to maintain specified capital ratios and imposes limitations on the Bank's aggregate investment in real estate, bank premises, and furniture and fixtures. The South Carolina Board of Financial Institutions also requires the Bank to prepare quarterly reports on the Bank's financial condition in compliance with its minimum standards and procedures.

All insured institutions must undergo regular on-site examinations by their appropriate banking agency. The cost of examinations of insured depository institutions and their affiliates may be assessed by the appropriate agency against each institution or affiliate as it deems necessary or appropriate. Insured institutions are required to submit annual reports to the FDIC, their federal regulatory agency, and their state supervisor when applicable. The FDIC has developed a method for insured depository institutions to provide supplemental disclosure of the estimated fair market value of assets and liabilities, to the extent feasible and practicable, in any balance sheet, financial statement, report of condition or any other report of any insured depository institution. The FDIC's Improvement Act (the "FDICIA") also requires the federal banking regulatory agencies to prescribe, by regulation, standards for all insured depository institutions and depository institution holding companies relating, among other things, to each of the following:

- internal controls;
- information systems and audit systems;
- loan documentation;
- credit underwriting;
- interest rate risk exposure; and
- asset quality.

Prompt Corrective Action. As an insured depository institution, the bank is required to comply with the capital requirements promulgated under the Federal Deposit Insurance Act and the regulations thereunder, which set forth five capital categories, each with specific regulatory consequences. The five categories are the following:

- **Well Capitalized** — The institution exceeds the highest minimum level for each relevant capital measure. A well capitalized institution is one (i) having a total capital ratio of 10% or greater, (ii) having a tier 1 capital

ratio of 6% or greater, (ii) having a leverage capital ratio of 5% or greater and (iv) that is not subject to any order or written directive to meet and maintain a specific capital level for any capital measure.

- **Adequately Capitalized** — The institution meets the required minimum level for each relevant capital measure. No capital distribution may be made that would result in the institution becoming undercapitalized. An adequately capitalized institution is one (i) having a total capital ratio of 8% or greater, (ii) having a tier 1 capital ratio of 4% or greater and (iii) having a leverage capital ratio of 4% or greater or a leverage capital ratio of 3% or greater if the institution is rated composite 1 under the CAMELS (Capital, Assets, Management, Earnings, Liquidity and Sensitivity to market risk) rating system.
- **Undercapitalized** — The institution fails to meet the required minimum level for any relevant capital measure. An undercapitalized institution is one (i) having a total capital ratio of less than 8% or (ii) having a tier 1 capital ratio of less than 4% or (iii) having a leverage capital ratio of less than 4%, or if the institution is rated a composite 1 under the CAMELS rating system, a leverage capital ratio of less than 3%.
- **Significantly Undercapitalized** — The institution is significantly below the required minimum level for any relevant capital measure. A significantly undercapitalized institution is one (i) having a total capital ratio of less than 6% or (ii) having a tier 1 capital ratio of less than 3% or (iii) having a leverage capital ratio of less than 3%.
- **Critically Undercapitalized** — The institution fails to meet a critical capital level set by the appropriate federal banking agency. A critically undercapitalized institution is one having a ratio of tangible equity to total assets that is equal to or less than 2%.

If the FDIC determines, after notice and an opportunity for hearing, that the bank is in an unsafe or unsound condition, the regulator is authorized to reclassify the bank to the next lower capital category (either undercapitalized or critically undercapitalized) and require the submission of a plan to correct the unsafe or unsound condition.

If the bank is not well capitalized, it cannot accept brokered deposits without prior FDIC approval. In addition, a bank that is undercapitalized cannot offer an effective rate for rates or 75 basis points or interest paid on deposits (including brokered deposits, if approval is granted for the bank to accept deposits of comparable size and maturity in either such institution's normal market area or in the market area in which such deposits would otherwise be accepted). Thus, for deposits in its own normal market area, an undercapitalized institution must offer rates that are not in excess of 75 basis points over the average local rates. For non-local deposits, the institution must offer rates that are not in excess of 75 basis points over either (1) the institution's own local rates or (2) the applicable non-local rates. In other words, the institution must adhere to the prevailing rates in its own normal market area for all deposits (whether local or non-local) and also must adhere to the prevailing rates in the non-local area for any non-local deposits. Thus, the institution will be unable to outbid non-local institutions for non-local deposits even if the non-local rates are lower than the rates in the institution's own normal market area.

Moreover, if the bank becomes less than adequately capitalized, it must adopt a capital restoration plan acceptable to the FDIC. The bank also would become subject to increased regulatory oversight, and would be increasingly restricted in the scope of its permissible activities. Each company having control over the institution (as defined by the law) must provide a limited guarantee that the institution will comply with its capital restoration plan. Except to the extent that a bank provides such a limited guarantee, an undercapitalized institution may not provide services to other banks, accept deposits from another institution, establish additional branch offices or engage in any new line of business, except in accordance with an approved capital restoration plan, or unless the FDIC determines that prompt corrective action will, under the purpose of prompt corrective action. The appropriate federal banking agency may, where appropriate, suspend for a significantly undercapitalized institution if an undercapitalized institution fails to submit an acceptable capital restoration plan or fails in any material respect to implement a plan accepted by the agency. A critically undercapitalized institution is subject to having a receiver or conservator appointed to manage its affairs and for loss of its charter to conduct banking activities.

An insured depository institution may not pay any amount for the bank holding company controlling that institution or any other person having control of the institution if, for such payment, the recipient is undercapitalized. In addition, an institution cannot make a capital distribution, except as provided in the statute, if the recipient is undercapitalized.

in substance a distribution of capital to the owners of the institution if following such a distribution the institution would be undercapitalized. Thus, if payment of such a management fee or the making of such would cause the Bank to become undercapitalized, it could not pay a management fee or dividend to us.

As of December 31, 2009, the Bank was deemed to be "undercapitalized." As described further below, on February 23, 2010, the Bank entered into a Consent Order (the "Consent Order") with the FDIC and the South Carolina Board of Financial Institutions which, among other things, requires the Bank to achieve and maintain Total Risk Based capital at least equal to 10% of risk-weighted assets and Tier 1 capital at least equal to 8% of total assets within 120 days from the effective date of the order.

Transactions with Affiliates and Insiders. The Company is a legal entity separate and distinct from the Bank and its other subsidiaries. Various legal limitations restrict the Bank from lending or otherwise supplying funds to the Company or its non-bank subsidiaries. The Company and the Bank are subject to Sections 23A and 23B of the Federal Reserve Act and Federal Reserve Regulation W.

Section 23A of the Federal Reserve Act places limits on the amount of loans or extensions of credit to, or investments in, or certain other transactions with, affiliates and on the amount of advances to third parties collateralized by the securities or obligations of affiliates. The aggregate of all covered transactions is limited in amount, as to any one affiliate, to 10% of the Bank's capital and surplus and, as to all affiliates combined, to 20% of the Bank's capital and surplus. Furthermore, within the foregoing limitations as to amount, each covered transaction must meet specified collateral requirements, and that is forbidden to purchase low quality assets from an affiliate.

Section 23B of the Federal Reserve Act, among other things, prohibits an institution from engaging in certain transactions with certain affiliates unless the transactions are on terms substantially the same, or at least as favorable to such institution or its subsidiaries, as those prevailing at the time for comparable transactions with non-affiliate companies.

Regulation W generally excludes all non-bank entities and certain subsidiaries of banks from treatment as affiliates, except to the extent that the Federal Reserve Board decides to treat a subsidiary as an affiliate. The regulation also limits the amount of loans that can be purchased by a bank from a company to not to exceed 10% of the bank's capital and surplus.

The Bank is also subject to certain restrictions on extensions of credit to executive officers, directors, certain principal shareholders, and their related interests. Such extensions of credit must be on terms substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with other borrowers and must not involve more than the normal risk of repayment or present other unfavorable features.

Branching. Under current South Carolina law, we may open branch offices throughout South Carolina with the prior approval of the South Carolina Board of Financial Institutions. In addition, with the regulatory approval, the Bank will be able to acquire existing banking operations in South Carolina. Furthermore, certain states have been revised that permits interstate branching by banks if allowed by state law, and interstate merger by banks. However, South Carolina law, with certain exceptions, currently permits branching across state lines only through inter-acquisition.

Anti-Tying Restrictions. Under amendments to the Bank Holding Company Act and Federal Reserve regulations, a bank is prohibited from engaging in certain tying or preference arrangements with its customers. In general, a bank may not extend credit, lease, sell property, or furnish any services of a particular kind, or any combination thereof, if (i) the customer obtain or provide some additional credit, property, or services from or to the bank, its affiliate, or any subsidiary thereof or (ii) the customer may not obtain some other credit, property, or services from a competitor, except to the extent reasonable conditions are imposed to assure the soundness of the credit extended. Certain arrangements for personalized banking may offer combined-balance products and may otherwise offer more favorable terms if a customer obtains or provides additional services. The general rule also exempts foreign transactions from the general rule. A bank holding company may bank. There are certain anti-tying requirements in connection with electronic benefit transfer services.

Community Reinvestment Act. The Community Reinvestment Act requires that, in connection with examinations of financial institutions within their respective jurisdictions, a financial institution's primary regulator, which is the FDIC for the Bank, shall evaluate the record of each financial institution in meeting the credit needs of its local communities, including low-

and moderate income neighborhoods. These factors are also considered in evaluating mergers, acquisitions, and applications to open a branch or facility. Failure to adequately meet these criteria could impose additional requirements and limitations on our Bank. Additionally, we must publicly disclose the terms of various Community Reinvestment Act-related agreements.

Finance Subsidiaries. Under the Gramm-Leach-Bliley Act (the "GLBA"), subject to certain conditions imposed by their respective banking regulators, national and state chartered banks are permitted to form "financial subsidiaries" that may conduct financial or incidental activities, thereby permitting bank subsidiaries to engage in certain activities that previously were impermissible. The GLBA imposes several safeguards and restrictions on financial subsidiaries, including that the parent bank's equity investment in the financial subsidiary be deducted from the bank's assets and tangible equity for purposes of calculating the bank's capital adequacy. In addition, the GLBA imposes new restrictions on transactions between a bank and its financial subsidiaries similar to restrictions applicable to transactions between banks and non-bank affiliates.

Consumer Protection Regulations. Activities of the Bank are subject to a variety of statutes and regulations designed to protect consumers. Interest and other charges related to contracts made by the Bank are subject to state usury laws and federal laws concerning interest rates. The Bank's loans, terms and conditions are also subject to federal laws applicable to credit transactions, such as the:

- The Federal Truth-In-Lending Act, governing disclosures of credit terms to consumer borrowers;
- The Home Mortgage Disclosure Act of 1975, requiring financial institutions to provide information to enable the public and public officials to determine whether a financial institution is fulfilling its obligation to help meet the housing needs of the community it serves;
- The Equal Credit Opportunity Act, prohibiting discrimination on the basis of race, creed or other prohibited factors in extending credit;
- The Fair Credit Reporting Act of 1978, as amended by the Fair and Accurate Credit Transactions Act, governing the use and provision of information to credit reporting agencies, certain identity theft protections and certain credit and other disclosures;
- The Fair Debt Collection Act, governing the manner in which consumer debts may be collected by collection agencies; and
- The rules and regulations of the various federal agencies charged with the responsibility of implementing these federal laws.

The deposit operations of the Bank also are subject to:

- the Right to Financial Privacy Act, which imposes a duty to maintain confidentiality of consumer financial records and prescribes procedures for complying with administrative subpoenas of financial records; and
- the Electronic Funds Transfer Act and Regulation E issued by the Federal Reserve Board to implement that Act, which governs automatic deposits to and withdrawals from deposit accounts and customers' rights and liabilities arising from the use of automatic teller machines and other electronic banking services.

Enforcement Powers. The Bank and its "institution-affiliated parties," including its management, employees, agents, independent contractors, and consultants such as attorneys and accountants and others who participate in the conduct of the financial institution's affairs, are subject to potential civil and criminal penalties for violations of law, regulations or written orders of a government agency. These practices can include the failure of an institution to timely file required reports or the filing of false or misleading information or the submission of inaccurate reports. Civil penalties may be as high as \$1,000 per day for such violations. Criminal penalties for some financial institution crimes have been increased to 30 years. In addition, regulators are provided with greater flexibility to commence enforcement actions against institutions. Civil enforcement actions include the termination of deposit insurance. Furthermore, banking agencies' power to issue cease-and-desist orders were expanded. Such orders may, among other things, require affirmative action to cease any bank resulting from a violation of practice, including restitution, reimbursement, indemnifications or guarantees against loss. A financial institution may also be ordered to restrict its growth, dispose of certain assets, rescind agreements or contracts, or take other actions to remedy the underlying violations.

Anti-Money Laundering. Financial institutions must implement money laundering programs that include established internal policies, procedures, and controls; ongoing monitoring and reporting; employee training program; and testing of the program by an independent audit function.

entering into specified financial transactions and account relationships and must meet enhanced standards for due diligence and "knowing your customer" in their dealings with foreign financial institutions and foreign customers. Financial institutions must take reasonable steps to conduct enhanced scrutiny of account relationships to guard against money laundering and to report any suspicious transactions, and recent laws provide law enforcement authorities with increased access to financial information maintained by banks. Anti-money laundering obligations have been substantially strengthened as a result of the USA Patriot Act, enacted in 2001 and renewed in 2006. Bank regulators routinely examine institutions for compliance with these obligations and are required to consider compliance in connection with the regulatory review of applications. The regulatory authorities have been active in imposing "cease and desist" orders and money penalty sanctions against institutions found to be violating these obligations.

USA PATRIOT Act. The USA PATRIOT Act became effective on October 26, 2001, amended, in part, the Bank Secrecy Act, and provides, in part, for the facilitation of information sharing among governmental entities and financial institutions for the purpose of combating terrorism and money laundering by enhancing anti-money laundering and financial transparency laws, as well as enhanced information collection tools and government mechanisms for the U.S. government, including: (i) requiring standards for verifying customer identification at account opening; (ii) new rules to promote cooperation among financial institutions, regulators, and law enforcement entities in identifying parties that may be involved in money laundering; (iii) new reporting requirements for nonfinancial trades and businesses filed with the Treasury Department's Financial Crimes Enforcement Network, including those involving currency transactions exceeding \$10,000; and (iv) filing suspicious activities reports by brokers and dealers if they believe a customer may be violating U.S. laws and regulations and requires enhanced due diligence requirements for financial institutions that do not later, probably, or manage private bank accounts or correspondent accounts for non-U.S. persons. Bank regulators routinely examine institutions for compliance with these obligations and are required to consider compliance in connection with the regulatory review of applications.

Under the USA PATRIOT Act, the Federal Bureau of Investigation ("FBI") can send our banking regulatory agencies lists of the names of persons suspected of being involved in terrorist activities. The Bank will be requested to search its records for any relationships or transactions with persons on these lists. If the Bank finds any such relationships or transactions, it must file a suspicious activity report and contact the FBI.

The Office of Foreign Assets Control ("OFAC"), which is a Division of the U.S. Department of the Treasury, is responsible for helping to insure that United States persons do not do business with certain countries, entities, and individuals of the United States, as defined by various Executive Orders and Acts of Congress. OFAC maintains and issues a list of names of persons and organizations suspected of interfering with U.S. foreign policy interests. If the Bank finds a name on any transaction, account or wire transfer that is on an OFAC list, the Bank must immediately file a suspicious activity report and notify the FBI. The Bank has appointed an OFAC compliance officer to oversee the inspection of its accounts and the filing of any notifications. The Bank actively checks high-risk OFAC areas such as new accounts, wire transfers and customer files. The Bank performs these checks utilizing software, which is updated each time a modification is made to the list. The Bank also maintains a list of Sanctioned Designated Nationals and Blocked Persons.

Privacy and Credit Information. Customers generally may prevent financial institutions from sharing public personal financial information with nonaffiliated third parties except under non-ordinary course of business circumstances, such as the processing of a transaction requested by the consumer or when the financial institution is jointly sponsored by another financial institution. Financial institutions generally may not disclose consumer account information to other financial institutions for direct mail marketing or other marketing to consumers. It is the Bank's policy to protect confidential information. Financial institutions are required to disclose their policies for collecting and protecting confidential information. Financial institutions may not share confidential information with nonaffiliated public persons or financial institutions without the consumer's consent, except as requested by the consumer or when the financial institution is jointly sponsored by another financial institution. Financial institutions generally may not disclose consumer account information to other financial institutions for direct mail marketing or other marketing to consumers.

Like other lending institutions, the Bank uses credit data for credit underwriting activities. Use of such data is regulated under the Fair Credit Reporting Act and other applicable laws, including credit reporting, prescreening, sharing of information between affiliates, and the use of credit information. The Fair and Accurate Credit Transactions Act of 2003 (the "FACT Act") authorizes states to enact laws that are more restrictive than the federal laws established by the FACT Act.

Payment of Dividends. The Bank is authorized to pay dividends from its capital. All dividends must be paid out of retained earnings and must be approved by the Board of Directors. The Bank is authorized to pay cash dividends up to 100% of net income. The Bank is authorized to pay cash dividends up to 100% of net income, provided that the South Carolina Board of Financial Institutions, provided that the

federal or state regulatory examination. The Bank must obtain approval from the South Carolina Board of Financial Institutions prior to the payment of any other cash dividends. In addition, under the FDICIA, the Bank may not pay a dividend if, after paying the dividend, the Bank would be undercapitalized. As described further below, on February 23, 2010, the Bank entered into the Consent Order with the FDIC and the South Carolina Board of Financial Institutions which, among other things, prohibits the Bank from declaring or paying any dividends or making any distributions of interest, principal, or other sums on subordinated debentures without the prior approval of the supervisory authorities.

Check 21. The Check Clearing for the 21st Century Act gives "substitute checks," such as a digital image of a check and copies made from that image, the same legal standing as the original paper check. Some of the major provisions include:

- allowing check truncation without making it mandatory;
- demanding that every financial institution communicate to accountholders in writing a description of its substitute check processing program and their rights under the law;
- legalizing substitutions for and replacements of paper checks without agreement from consumers;
- retaining in place the previously mandated electronic collection and return of checks between financial institutions only when individual agreements are in place;
- requiring that when accountholders request verification, financial institutions produce the original check (or a copy that accurately represents the original) and demonstrate that the account debit was accurate and valid; and
- requiring the re-crediting of funds to an individual's account on the next business day after a consumer proves that the financial institution has erred.

Effect of Governmental Monetary Policies. Our earnings are affected by domestic economic conditions and the monetary and fiscal policies of the United States government and its agencies. The Federal Reserve Bank's monetary policies have had, and are likely to continue to have, an important impact on the operating results of commercial banks through its power to implement national monetary policy in order, among other things, to curb inflation or demand a recession. The monetary policies of the Federal Reserve Board have major effects upon the levels of bank loans, investments and deposits through its open market operations in United States government securities and through its regulation of the discount rate on borrowings of member banks and the reserve requirements against member bank deposits. It is not possible to predict the nature or impact of future changes in monetary and fiscal policies.

Insurance of Accounts and Regulation by the FDIC. Our deposits are insured up to applicable limits by the Deposit Insurance Fund of the FDIC. The Deposit Insurance Fund is the successor to the Federal Deposit Insurance Fund and the Savings Association Insurance Fund, which were merged effective March 31, 2009. As insurer, the FDIC imposes deposit insurance premiums and is authorized to conduct examinations of and to require reporting by FDIC insured institutions. It also may prohibit any FDIC insured institution from engaging in any activity the FDIC determines by regulation or order to pose a serious risk to the insurance fund. The FDIC also has the authority to initiate enforcement actions against savings institutions, after giving the FDIC's Office of Supervision an opportunity to take such action, and may terminate the deposit insurance if it determines that a savings institution is engaged in unsafe or unsound practices or is in an unsafe or unsound condition.

Under regulations effective January 1, 2007, the FDIC adopted a new risk-based premium system that provides for quarterly assessments based on an insured institution's ranking in capital and risk ratings, and upon supervisory and capital evaluations. For deposits held as of March 31, 2009, institutions were assessed at annual rates ranging from 13 to 50 basis points, depending on each institution's risk of default as measured by regulatory capital ratios and other supervisory measures. Effective April 1, 2009, assessments will take into account each institution's efficiency and other qualitative risk factors. Assessments of 2009 will result in assessments ranging from 7 to 77.5 basis points. We anticipate our future annual assessments to be higher than in previous periods.

FDIC insured institutions are required to provide Financing Certificates guarantees, in order to fund the interest on bonds issued to resolve thrift failures in the 1980s. For 2010, the annual assessment of 2009 by FDIC insured institutions in assessment equalled 1.14 basis points for domestic deposits. These assessments, which may be revised according to the level of deposits, will continue until the bonds mature in the years 2017 through 2019.

The FDIC may terminate the deposit insurance of any insured depository institution, including the Bank, if it determines after a hearing that the institution has engaged in unsafe or unsound practices, is engaged in unsafe or unsound condition

to continue operations or has violated any applicable law, regulation, rule, order or condition imposed by the FDIC. It also may suspend deposit insurance temporarily during the hearing process for the permanent termination of insurance, if the institution has no tangible capital. If insurance of accounts is terminated, the account in the institution at the time of the termination, less subsequent withdrawals, shall continue to be insured for a period of six months to two years, as determined by the FDIC.

Proposed Legislation and Regulatory Action. New regulations and statutes are regularly proposed that contain wide-ranging proposals for altering the structures, regulations, and competitive relationships of the nation's financial institutions. We cannot predict whether or in what form any proposed regulation or statute will be adopted or the extent to which our business may be affected by any new regulation or statute.

Recent Legislative and Regulatory Initiatives to Address Financial and Economic Crises. The Congress, Treasury Department and the federal banking regulators, including the FDIC, have taken broad action since early September 2008 to address volatility in the U.S. banking system.

In October 2008, the Emergency Economic Stabilization Act of 2008 ("EESA") was enacted. The EESA authorizes the Treasury Department to purchase from financial institutions and their holding companies up to \$700 billion in mortgage loans, mortgage-related securities and certain other financial instruments, including debt and equity securities issued by financial institutions and their holding companies in a troubled asset relief program ("TARP"). The purpose of TARP is to restore confidence and stability to the U.S. banking system and to encourage financial institutions to increase their lending to customers and to each other. The Treasury Department has allocated \$250 billion towards the TARP Capital Purchase Program ("CPP"). Under the CPP, Treasury will purchase debt or equity securities from participating institutions. The TARP also will include direct purchases or guarantees of troubled assets of financial institutions. Participants in the CPP are subject to executive compensation limits and are encouraged to expand their lending and mortgage loan modifications.

EESA also increased FDIC deposit insurance on most accounts from \$100,000 to \$250,000. This increase is in place until the end of 2013 and is not covered by deposit insurance premiums paid by the financial industry.

Following a systemic risk determination, the FDIC established the Temporary Liquidity Guarantee Program ("TLGP") on October 14, 2008. The TLGP includes the Temporary Access Guarantee Program ("TAGP") which provides unlimited deposit insurance coverage through December 31, 2009 for noninterest-bearing sweep accounts, business checking accounts and certain funds swept into noninterest-bearing sweep accounts. This has been extended until June 30, 2011. Institutions participating in the TLGP pay a 10 basis points fee (annualized) on the amount of each covered deposit starting on 10/14/08, while the extra deposit insurance is in place. The TLGP also includes the Debt Guarantee Program ("DGP") under which the FDIC guarantees certain senior unsecured debt of FDIC-insured institutions and their holding companies. The unsecured debt must be issued on or after October 14, 2008 and not later than June 30, 2009.

The guarantee is effective through the earlier of the maturity date or June 30, 2012. On March 17, 2009, the FDIC adopted an interim rule that extends the DGP and increases the charges on existing notes for new debt issuances. This extension allowed institutions that had issued guaranteed debt before April 1, 2009 to issue guaranteed debt during the extended insurance period that ended on October 31, 2009. For such institutions, the guarantee on debt issued on or after April 1, 2009 will be in effect until no later than December 31, 2012. The DGP coverage limit is generally 125% of the eligible entity's eligible debt equal to \$500 million as of 10/30/08 and scheduled to mature on or before June 30, 2009 or, for certain insured institutions, including those with FDIC-insured branches, depending on the term of the debt maturity, the nonrefundable DGP fee ranges from 65 to 110 basis points for the first covered 12 months ending until the earlier of maturity or June 30, 2012 and 75 to 125 basis points for additional covered debt issued on or after 10/30/08. The TAGP and DGP are in effect for all eligible entities, unless the entity is not in effect on or before December 31, 2009, in which case it is not eligible for the TAGP and the DGP.

On February 17, 2009 President Obama signed into law The American Recovery and Reinvestment Act of 2009 (the "Recovery Act"), more commonly known as the economic stimulus package. The Recovery Act includes a wide variety of programs intended to stimulate the economy and provide for extensive infrastructure, energy, health, and education needs. In addition, the Recovery Act imposes certain requirements on companies that receive financial assistance from all federal and future TARP recipients that are in addition to those previously imposed by the Recovery Act. TARP recipients have repaid the Treasury Department, which is now permitted under the Recovery Act to use up to 25% of the TARP funds for the new capital, subject to the Treasury Department's consultation with the institution's regulatory agencies.

On March 23, 2009, the Treasury Department, in conjunction with the FDIC and the Federal Reserve, announced the Public-Private Partnership Investment Program for Legacy Assets which consists of the following two separate plans, addressing two distinct asset groups.

The first plan is the Legacy Loan Program, which has a primary purpose to facilitate the sale of troubled mortgage loans by eligible institutions, including FDIC-insured federal or state banks and savings associations. Eligible assets are not strictly limited to loans; however, what constitutes an eligible asset will be determined by participating banks, their primary regulators, the FDIC and the Treasury Department. Under the Legacy Loan Program, the FDIC has sold certain troubled assets out of an FDIC receivership in two separate transactions related to the failed Illinois bank, Cocus Bank, NA, and the failed Texas bank, Franklin Bank, S.S.B. These transactions were completed in September 2009 and October 2009, respectively.

The second plan is the Securities Program, which is administered by the Treasury Department and involves the creation of public-private investment funds to target investments in eligible residential mortgage-backed securities and commercial mortgage-backed securities issued before 2009 that originally were rated AAA or the equivalent by two or more nationally recognized statistical rating organizations, without regard to rating enhancements (collectively, "Legacy Securities"). Legacy Securities must be directly secured by actual mortgage loans, leases or other assets, and may be purchased only from financial institutions that meet TARP eligibility requirements. The Treasury Department received over 100 unique applications to participate in the Legacy Securities PPP and in July 2009 selected nine public-private investment fund managers. As of December 31, 2009, public-private investment funds have completed initial and subsequent closings on approximately \$6.2 billion of private sector equity capital, which was matched 100% by the Treasury Department, representing \$12.4 billion of total equity capital. The Treasury Department has also provided \$12.4 billion of debt capital, representing \$24.8 billion of total purchasing power. As of December 31, 2009, public-private investment funds have invested on approximately \$4.5 billion of total capital which has been invested in certain non-agency residential mortgage backed securities and commercial mortgage backed securities and cash equivalents pending investment.

On May 22, 2009, the FDIC levied a one-time special assessment on all banks due on September 30, 2009. In addition, on November 12, 2009, the FDIC issued a final rule to require banks to incorporate risk-based assessments for the fourth quarter of 2009 and for all of 2010, 2011 and 2012 and to increase assessment rates effective on January 1, 2011.

Although it is likely that further regulatory actions will arise as the federal government attempts to address the economic situation, we cannot predict the effect that federal or state regulatory actions, economic conditions or federal or state legislation may have on our business and earnings in the future.

Item 1A. Risk Factors.

Our business, financial condition, and results of operations could be harmed by any of the following risks, or other risks that have not been identified or which we believe are immaterial or unlikely. Shareholders should carefully consider the risks described below in conjunction with the other information in this Form 10-K and the risks of each corporation, by reference in this Form 10-K, including our consolidated financial statements and notes thereto.

There is substantial doubt about our ability to continue as a going concern.

We have prepared the consolidated financial statements contained in this report assuming that the Company will be able to continue as a going concern, which contemplates the realization of assets and the discharge of liabilities in the normal course of business for the foreseeable future. However, as a result of continuing losses, as well as other uncertainties associated with the Bank's ability to increase its capital levels to meet regulatory requirements, management has concluded that there is substantial doubt about the Company's ability to continue as a going concern. In its report dated February 16, 2010, our independent registered public accounting firm stated that these uncertainties raise substantial doubt about our ability to continue as a going concern. Our consolidated statements do not include any adjustments that might be necessary if we are unable to continue as a going concern. If we are unable to continue as a going concern, our shareholders will likely lose all of their investment in the Company. See Management's Discussion and Analysis of Financial Condition and Results of Operations for management's discussion of our financial condition at December 31, 2009.

experience shows that a portion of loans will become delinquent and a portion of loans will require partial or entire charge-off. Regardless of the underwriting criteria utilized, losses may be experienced as a result of various factors beyond our control, including:

- cost overruns;
- declining property values;
- mismanaged construction;
- inferior or improper construction techniques;
- economic changes or downturns during construction;
- rising interest rates that may prevent sale of the property; and
- failure to sell completed projects or units in a timely manner.

The occurrence of any of the preceding risks could result in the deterioration of one or more of these loans which could significantly increase our percentage of nonperforming assets. An increase in nonperforming loans may result in a loss of earnings from these loans, an increase in the related provision for loan losses and an increase in charge-offs, all of which could have a material adverse effect on our financial condition and results of operations. As of December 31, 2009, our non-performing assets were \$42.4 million. If the current economic conditions continue for a prolonged period of time, it is very likely that the level of nonperforming assets will rise to higher levels in 2010, requiring additional provisions for loan losses.

In addition, while we generally underwrite the loans in our portfolio in accordance with our own internal underwriting guidelines and regulatory supervisory guidelines, in certain circumstances we have made loans which exceed either our internal underwriting guidelines, supervisory guidelines, or both. As of December 31, 2009, approximately \$18.1 million of our loans, or 109% of our Company's capital, had loan-to-value ratios that exceeded regulatory supervisory guidelines, of which 16 loans totaling approximately \$6.2 million had loan-to-value ratios of 100% or more. At December 31, 2008, \$22.9 million of our loans, or 65% of our Company's capital, exceeded the supervisory loan to value ratio. The number of loans in our portfolio with loan-to-value ratios in excess of supervisory guidelines, our internal guidelines, or both could increase the risk of delinquencies and defaults in our portfolio.

We have become subject to enforcement actions that will require us to take certain actions.

On June 29, 2009, the Bank entered into a Memorandum of Understanding (the "MOU") with the Commissioner of Banking of the South Carolina Board of Financial Institutions and the Regional Director of the FDIC's Atlanta Regional Office. The MOU required the Bank to, among other things, (1) develop a capital plan to the supervisory authorities for returning to a "well-capitalized" designation; (2) develop specific plans and proposals for the reduction and improvement of assets which are subject to adverse classification and past due loans; (3) implement a plan to decrease the concentration of commercial real estate loans; (4) develop and implement an improved loan review program; and (5) review overall liquidity objectives and develop plans and procedures aimed at improving liquidity and reducing reliance on volatile liabilities to fund loans. In addition, the Bank may not pay dividends without the prior written consent of each supervisory authority. Since entering into the MOU, the Bank has been actively pursuing the corrective actions required by the MOU in an effort to ensure that the requirements of the MOU are met in full by January.

The FDIC completed a safety and soundness examination of the Bank in the fourth quarter of 2009. Based on the Bank's current financial condition, the Bank entered into the Consent Order with the FDIC and the South Carolina Board of Financial Institutions on February 23, 2010, which contains, among other things, a requirement for our Banked level and maintain minimum capital requirements that exceed the minimum regulatory capital ratios for "well-capitalized" banks. Under the enforcement action, the Bank may no longer accept, renew, or roll over loans that exist. In addition, under the Consent Order, we no longer meet the regulatory requirements to be eligible for expedited processing of certain applications for new branches, including branch upgrades, and we are required to obtain FDIC approval before making certain

payments to departing executives and before adding new directors or senior executives. Our regulators have considerable discretion in whether to grant required approvals, and no assurance can be given that such approvals would be forthcoming. In addition, we are required to take certain other actions in the areas of capital, liquidity, asset quality, and interest rate risk management, as well as to file periodic reports with the FDIC and the South Carolina Board of Financial Institutions regarding our progress in complying with the Consent Order. The Consent Order supersedes the MOU. Any material failure to comply with the terms of the Consent Order could result in further enforcement action by the FDIC. While we intend to take such actions as may be necessary to comply with the requirements of the Consent Order and subsequent FDIC guidance, we may be unable to comply fully with the deadlines or other terms of the Consent Order. For further discussion of the Consent Order, please see below.

Our Bank may become subject to a federal conservatorship or receivership if it cannot comply with the Consent Order, or if its condition continues to deteriorate.

As noted above, the Bank executed a Consent Order with the FDIC and the South Carolina Board of Financial Institutions. The Consent Order requires the Bank to, among other things, implement a plan to achieve and maintain minimum capital requirements, including provisions for contingency funding arrangements. The condition of the Bank could continue to deteriorate in the current economic environment and this could lead to a loss of capital and other assets. Should we fail to comply with the capital and liquidity funding requirements in the Consent Order, or should our condition continue to deteriorate in our financial condition, we may be subject to being placed into a federal conservatorship or receivership by the FDIC, with the FDIC acting as conservator or receiver. If those events occur, we probably would suffer a complete loss of the value of our ownership interest in the Bank and we subsequently may be exposed to significant claims by the FDIC. Federal conservatorship or receivership would also result in a complete loss of your investment.

We may face damage to our reputation and business as a result of negative publicity, including an increase in deposit outflows.

We believe that approximately \$9.1 billion, or 2.4%, of our deposits are above FDIC insurance limits as of December 31, 2009, and these deposits are particularly susceptible to withdrawal based on negative publicity of our current financial condition. Although the increase in the FDIC insurance limit to \$250,000 per depositor per FDIC-insured institution is in place through December 31, 2013, we cannot predict whether the limit will be extended or increased beyond that period. Negative public opinion could adversely affect our ability to keep and attract customers, expose us to withdrawal of deposits, and reduce our liquidity capacity of our currently available liquidity, which would result in a takeover of the Bank by the FDIC.

A significant portion of our loan portfolio is secured by real estate, and the recent weakening of the local real estate market could continue to hurt our business.

A significant portion of our loan portfolio is secured by real estate. As of December 31, 2009, approximately 50% of our loans had real estate as the primary or secondary component of collateral. The real estate collateral in each case provides an alternate source of repayment in the event of default by the borrower and may deteriorate in value during the time the credit is extended. The recent downturn in the real estate market has resulted in a decline in real estate values, particularly in our residential real estate construction and development portfolio. The primary collateral source for many of our loans is the financing of existing real estate since repayment is dependent on the borrower's ability to sell the property or to refinance the sale of the property with permanent financing. Slow housing conditions have affected the real estate market, and we believe that these trends are likely to continue. In any event, a significant downturn in real estate values could result in a significant impairment to the value of our collateral and our ability to sell the collateral upon foreclosure. If real estate values continue to decline, it is also more likely that we would be required to increase our allowance for loan losses. If real estate values continue to decline, we are required to liquidate the property collateralizing a loan to satisfy the debt or to increase the allowance for loan losses, it could materially reduce our profitability and adversely affect our financial condition.

This prolonged weakening in the residential real estate market in 2008 and 2009 has resulted in an increase in our nonperforming loans, and there is a risk that this trend will continue. This could result in a net loss of earnings and an increase in our provision for loan losses and loan charge-offs, all of which could have a material negative impact on our financial condition.

orders. Negative developments in the financial industry and the domestic and international credit markets, and the impact of new legislation in response to those developments, may negatively impact our operations by restricting our business operations, including our ability to originate or sell loans, and adversely impact our financial performance. We can provide no assurance regarding the manner in which any new laws and regulations will affect us.

There can be no assurance that recently enacted legislation will help stabilize the U.S. financial system.

There can be no assurance that the government actions that have been taken over the last 18 months, including EESA and the Recovery Act, will achieve their purpose. The failure of the financial markets to stabilize, or a continuation or worsening of the current financial market conditions, could have a material adverse effect on our business, our financial condition, the financial condition of our customers, our common stock trading price, as well as our ability to access credit. It could also result in declines in our investment portfolio which could be "other-than-temporary impairments."

Continuation of the economic downturn could reduce our customer base, the level of deposits, and demand for financial products such as loans.

Our success significantly depends upon the growth in population, income levels, deposits, and housing starts in our markets. The current economic downturn has negatively affected the markets in which we operate and, in turn, the quality of our loan portfolio. If the communities in which we operate do not grow or if prevailing economic conditions locally or nationally remain unfavorable, our business may not succeed. A continuation of the economic downturn or prolonged recession would likely result in the continued deterioration of the quality of our loan portfolio and a reduction in levels of deposits, which in turn would hurt our business. Interest received on loans represented approximately 88% of our interest income for the year ended December 31, 2008. If the economic downturn continues or a prolonged economic recession occurs in the economy as a whole, customers will be less likely to repay their loans as scheduled. Moreover, in many cases the value of real estate or other collateral that secures our loans has been adversely affected by the economic conditions and could continue to be negatively affected. Unlike many larger institutions, we are not able to spread the risks of unfavorable local economic conditions across a large number of diversified economies. Our operations are more directly affected by downturns in local economies, and adversely affect our business.

Our small- to medium-sized business target markets may have fewer financial resources to weather the current downturn in the economy.

We target the banking and financial services needs of small- and medium-sized businesses. These businesses generally have fewer financial resources in terms of capital assets to weather the current downturn in the economy. Current economic conditions could have a negative impact on these businesses in the markets in which we operate and their financial resources. Our operations may continue to be adversely affected.

We are exposed to changes in the regulation of financial services companies.

Proposals for further regulation of the financial services industry are continually being introduced in the Congress of the United States of America and the General Assembly of the State of South Carolina. The agencies regulating the financial services industry also periodically adopt changes to their regulations. On September 7, 2008, the Treasury Department announced that Freddie Mac (along with Freddie Mac) had been placed in conservatorship by the board of the newly created Federal Housing Finance Agency. On October 3, 2008, EESA was signed into law, on October 14, 2008 the Treasury Department announced the CPP under EESA, and on February 17, 2009 the Recovery Act was signed into law. A number of regulatory proposals have been adopted or regulatory changes may be made that would have an adverse effect on our business. In the future, we may be restricted in our regulation, which could restrict our activities" below.

The FDIC Deposit Insurance assessments that we are required to pay may substantially increase in the future, which would have an adverse effect on our earnings and cash flow.

As a member institution of the FDIC, we are required to pay a certain deposit insurance premium assessment to the FDIC. During the year ended December 31, 2008, we paid a certain number of deposit insurance assessments. Due to the recent failure of several unaffiliated FDIC insurance depository institutions, and the FDIC's new TLD, the deposit insurance

premium assessments paid by all banks will likely increase. In addition, new FDIC requirements shift a greater share of any increase in such assessments onto institutions with higher risk profiles, including banks with heavy reliance on brokered deposits, such as our Bank. Continued increases in this expense would have a material adverse effect on our financial condition.

Changes in prevailing interest rates may reduce our profitability.

Our results of operations depend in large part upon the level of our net interest income, which is the difference between interest income from interest-earning assets, such as loans and mortgage-backed securities, and interest expense on interest-bearing liabilities, such as deposits and other borrowings. Depending on the terms and maturities of our assets and liabilities, a significant change in interest rates could have a material adverse effect on our profitability. Many factors cause changes in interest rates, including governmental monetary policies and domestic and international economic and political conditions. While we intend to manage the effects of changes in interest rates by adjusting the terms, maturities, and pricing of our assets and liabilities, our efforts may not be effective and our financial condition and results of operations could suffer.

We are subject to extensive regulation that could limit or restrict our activities.

We operate in a highly regulated industry and are subject to examination, supervision, and comprehensive regulation by various regulatory agencies. Our compliance with these regulations is costly and restricts certain of our activities, including payment of dividends, mergers and acquisitions, investments, loans and interest rates charged, interest rates paid on deposits, and locations of offices. We are also subject to capitalization guidelines established by our regulators, which require us to maintain adequate capital to support our growth.

The laws and regulations applicable to the banking industry could change at any time, and we cannot predict the effects of these changes on our business and profitability. Because government regulation greatly affects the business and financial results of all commercial banks and bank holding companies, our cost of compliance could adversely affect our ability to operate profitably.

The Sarbanes-Oxley Act of 2002, and the related rules and regulations promulgated by the Securities and Exchange Commission that are now applicable to us, have increased the administrative and legal cost of corporate governance, reporting, and disclosure practices.

We face strong competition for customers, which could prevent us from obtaining customers and the interest rate that we can pay to attract customers is subject to the national deposit rate applicable to us.

The banking business is highly competitive and we experience competition in our market from many other financial institutions. We compete with commercial banks, credit unions, savings and loan associations, mortgage banking firms, consumer finance companies, securities brokerage firms, insurance companies, mutual funds, investment companies, and other funds, as well as other super-regional, national, and international financial institutions that operate in the same geographic areas as we do. We compete with these institutions both in attracting deposits and in making loans. In addition, we compete with other existing financial institutions and from non-residents. Many of our competitors are well-established, larger financial institutions. These institutions offer some services, such as extensive and established branch networks, that we do not currently offer. There is a risk that we will not be able to compete successfully with other financial institutions in our market, and that our competitors may be able to pay higher interest rates to attract deposits, resulting in reduced profitability. In addition, competitors that are not depository institutions are generally not subject to the extensive regulations that apply to us. Also, the Bank is under the national deposit rate ceiling, which means that we may be prohibited from paying interest rates as high as some of our competitors that are well capitalized.

The costs of being an SEC registered company are significantly higher for smaller companies such as CommunitySouth Financial Corporation because of the requirements of the act.

The Sarbanes-Oxley Act of 2002 has increased the complexity, and cost of corporate governance, reporting, and disclosure practices. These regulations are applicable to our Company. We have experienced, and expect to continue to experience, increased compliance costs, including costs related to internal controls, as a result of the Sarbanes-Oxley Act. These necessary costs are expected to increase over time.

company of our size and will affect our profitability more than that of one of our larger competitors.

Item 2. Properties.

Our main office is located at 6602 Calhoun Memorial Highway, Easley, South Carolina 29640. Our site is approximately 1.2 acres in size, and the building is approximately 10,000 square feet. We own our main office and lease all others. We have five full service branch offices in addition to the main office. The branch sites are in the towns of Anderson, Greenville, Greer, Mauldin and Spartanburg, South Carolina. Our full service branches service the entire state of South Carolina, but primarily the counties of Anderson, Greenville, Pickens and Spartanburg.

We have a ten year lease that began in November 2005 for our Spartanburg office. The office is located at 531 East Main Street, Spartanburg, S.C. 29302.

We have a ten year lease that began in November 2005 for our Mauldin office. The office is located at 787 East Butler Road, Mauldin, S.C. 29662.

We have a ten year lease that began in June 2006 for our Anderson office. The office is located at 1510 North Main Street, Anderson, S.C. 29621.

We have a ten year lease that began in November 2006 for our Greer office. The office is located at 530 West Wade Hampton Blvd., Greer, S.C. 29650.

We have a three year lease that began in May 2007 for our Loan Operations center. The operations center is located at 6606 Calhoun Memorial Highway, Easley, S.C. 29640.

We have a ten year lease that began in October 2007 for our Greenville office. The office is located at 2415 Laurens Road, Greenville, S.C. 29607.

We believe that all of our properties are adequately covered by insurance.

Item 3. Legal Proceedings.

In the ordinary course of operations, we may be a party to various legal proceedings from time to time. We do not believe that there is any pending or threatened proceeding against us, which, if determined adversely, would have a material effect on our business, results of operations, or financial condition.

Item 4. Submission of Matters to a Vote of Security Holders.

At a special meeting of the shareholders on November 18, 2009, our shareholders approved the proposal to amend our articles of incorporation to increase the number of authorized shares of common stock from 10 million shares to 35 million shares. The shareholders voted on the proposal as indicated below:

	Value	% of Outstanding Common Shares
Votes For	2,311,147	72.78%
Votes Against	87,277	6.98%
Abstain	—	—

Item 5. Market for Common Equity and Related Stockholder Matters.

On January 16, 2006, the Company effected a 5-for-4 stock split in the form of a stock dividend for shareholders of record as of December 15, 2005. On January 16, 2007, the Company effected a 5-for-1 stock split in the form of a stock dividend for shareholders of record as of December 15, 2006. All per share data has been adjusted for all periods prior to the splits.

Since March 15, 2006, our common stock has been quoted on the OTC Bulletin Board under the symbol "CBSO." Quotations on the OTC Bulletin Board reflect inter-dealer prices, without retail markup, mark-down, or commissions, and may not represent actual transactions. Transactions of our common stock did not begin to occur on the OTC Bulletin Board until March 16, 2006.

The following is a summary of the high and low bid prices for our common stock reported by the OTC Bulletin Board for the periods indicated (the bid prices have been adjusted for all stock splits):

2009	High	Low
First Quarter	\$ 3.70	\$ 1.10
Second Quarter	3.00	1.30
Third Quarter	2.00	1.50
Fourth Quarter	1.80	0.40
2008	High	Low
First Quarter	\$ 10.00	\$ 7.20
Second Quarter	9.00	5.50
Third Quarter	7.00	2.53
Fourth Quarter	5.50	1.75

Our articles of incorporation authorize us to issue up to 35,000,000 shares of common stock, of which 1,698,697 shares were outstanding as of December 31, 2009. We had approximately 897 shareholders of record as of December 31, 2009.

We have not declared or paid any cash dividends on our common stock since our inception. For the foreseeable future we do not intend to declare cash dividends. We intend to retain earnings to grow our business and strengthen our capital base. Our ability to pay dividends depends on the ability of the Bank to pay dividends to us. As a South Carolina state chartered bank, the Bank may only pay dividends out of its net profits after deducting expenses, including losses and bad debts. In addition, the Bank is prohibited from declaring a dividend on its shares of common stock unless its surplus equals or exceeds its stated capital. As of December 31, 2009, the Bank had a deficit of \$19,057,000. In addition, pursuant to the terms of the Consent Order with the FDIC and the South Carolina Board of Financial Institutions, the Bank may not pay dividends without prior written consent of each supervisory authority.

The following table sets forth the equity compensation plan information at December 31, 2009. All option and warrant information has been adjusted to reflect all prior stock splits and dividends.

Equity Compensation Plan Information

Plan Category	(A) Number of securities to be issued upon exercise of outstanding options, warrants and rights	(B) Weighted-average exercise price of outstanding options, warrants and rights	(C) Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column(a))
Equity compensation plans approved by security holders	756,033	\$ 6.99	230,693
Equity compensation plans not approved by security holders	171,404	\$ 6.40	0
Total	927,437	\$ 6.88	230,693

- (1) The shares available for issuance is currently set at 21% of our outstanding shares. On January 16, 2006 the Company adopted a resolution that terminated the "evergreen" provision of the Company's 2005 Stock Incentive Plan. As a result, the number of shares of common stock issuable under the plan shall not be further increased in connection with any future share issuances by the Company.
- (2) Each of our organizers received, for no additional consideration, a warrant to purchase one share of common stock for \$10.00 per share for every two shares they purchased in the offering, up to a maximum of 10,000 shares per organizer. The warrants are represented by separate warrant agreements. The warrants vested on May 18, 2005, 120 days after the date of the opening of the Bank, and they are exercisable in whole or in part during the 10 year period following that date. If the South Carolina Board of Financial Institutions or the FDIC issues a capital directive or other order requiring the Bank to obtain additional capital, the warrants will be forfeited, if not immediately exercised.

Item 6. Selected Financial Data.**Selected Financial Data**

The following selected financial data for the five years ended December 31, 2009 was derived from the consolidated financial statements and other data of the Company and its subsidiary, the Bank. The selected financial data should be read in conjunction with the consolidated financial statements of the Company, including the accompanying notes, included elsewhere herein.

On January 16, 2006 the Company effected a 5-for-1 stock split in the form of a stock dividend for shareholders of record as of December 15, 2005. On January 16, 2007, the Company effected a 5-for-1 stock split in the form of a stock dividend for shareholders of record as of December 15, 2006. All share and per share data has been adjusted for all periods prior to the splits.

(Dollars in thousands except per share data)	2009	2008	2007	2006	2005
Income Statement Data:					
Interest income — loans	\$ 16,959	\$ 20,163	\$ 21,403	\$ 13,644	\$ 4,544
Interest income — investments	2,269	2,547	1,813	1,041	441
Total interest income	19,228	22,710	23,216	14,685	4,985
Interest expense — deposits	(8,599)	(12,580)	(13,069)	(7,201)	(1,863)
Net interest income	10,629	10,130	10,147	7,484	3,122
Provision for loan losses	(16,990)	(7,168)	(1,188)	(1,532)	(1,558)
Net interest income after provision for loan losses	(6,361)	2,962	8,959	5,952	1,564
Non-interest income	2,773	1,392	1,575	842	321
Non-interest expense	(13,670)	(9,510)	(8,184)	(5,197)	(2,680)
Income (loss) before income taxes	(17,308)	(5,156)	2,350	1,517	(795)
Income tax (expense) benefit	(983)	1,806	(782)	(600)	179
Net income (loss)	\$ (18,291)	\$ (3,350)	\$ 1,568	\$ 1,137	\$ (616)
Balance Sheet Data:					
Total assets	\$ 421,534	\$ 397,516	\$ 377,867	\$ 249,273	\$ 136,826
Earning assets	411,254	374,239	361,890	233,739	133,285
Investment securities, available for sale (1)	103,898	47,602	24,844	190	—
Other investments (2)	1,419	1,905	447	271	83
Loans (3)	276,111	320,667	307,934	217,714	115,704
Allowance for loan losses	(17,119)	(8,188)	(4,214)	(3,091)	(1,558)
Deposits	276,111	296,513	327,664	217,031	106,972
Shareholders' equity	8,609	28,528	21,471	29,895	28,286
Per-Share Data:					
Net income (loss) — basic	\$ (2.89)	\$ (0.71)	\$ 0.33	\$ 0.25	\$ (0.13)
Net income (loss) — diluted	(2.91)	(0.71)	0.31	0.22	(0.13)
Book value	5.55	5.07	4.70	4.12	6.04
Return on Equity and Assets:					
Return on average assets	(1.57)%	(0.87)%	0.50%	0.75%	(0.77)%
Return on average equity	(7.21)%	(1.91)%	5.12%	4.35%	(2.24)%
Average equity to average assets ratio	5.1%	5.99%	9.36%	11.33%	34.55%

(1) Marketable securities are stated at fair value.

(2) Non-marketable securities are stated at cost.

(3) Loans are stated at gross amounts before allowance for loan losses.

**COMMUNITYSOUTH FINANCIAL CORPORATION
MANAGEMENT'S DISCUSSION AND ANALYSIS**

Basis of Presentation

The following discussion should be read in conjunction with the Company's Consolidated Financial Statements and the Notes thereto and the other financial data included elsewhere in this Annual Report on Form 10-K. The financial information provided below has been rounded in order to simplify its presentation. However, the ratios and percentages provided below are calculated using the detailed financial information contained in the Consolidated Financial Statements, the Notes thereto and the other financial data included elsewhere in this Annual Report on Form 10-K.

Overview

The following discussion describes our results of operations for the years ended December 31, 2009 and 2008 and also analyzes our financial condition as of December 31, 2009 and 2008. We received approvals from the FDIC, the Federal Reserve Board ("FRB") and the South Carolina Board of Financial Institutions during January 2005, and commenced business on January 18, 2005.

The Company is a bank holding company headquartered inasley, South Carolina. Our subsidiary, the Bank, opened for business on January 18, 2005. All Seasons Properties, LLC, a subsidiary of the Bank, was formed in 2009 for the purpose of buying and marketing repossessed assets. In addition to the main office inasley, the Bank has five branch locations in the upstate region of South Carolina. We opened our Mauldin branch in the fourth quarter of 2005, our Spartanburg branch in the first quarter of 2006, our Anderson branch in the third quarter of 2006, our Greer branch in the fourth quarter of 2006 and our Greenville branch in the third quarter of 2007. The Bank provides banking services to domestic markets, principally in the Upstate of South Carolina. The deposits of the Bank are insured by the FDIC.

Like most community banks, we derive most of our income from interest we receive on our loans and investments. Our primary source of funds for making these loans and investments is our deposits, on which we pay interest. Consequently, one of the key measures of our success is our amount of net interest income, or the difference between the income on our interest-earning assets, such as loans and investments, and the expense on our interest-bearing liabilities, such as deposits. Another key measure is the spread between the yield we earn on these interest-earning assets and the interest we pay on our interest-bearing liabilities.

Current Economic Environment

Markets in the United States, including our market areas, have experienced extreme volatility and disruption for more than 12 months. According to the National Bureau of Economic Research, the United States entered into an economic recession in December 2007. Dramatic slowdowns in the residential housing industry with falling home prices, increasing foreclosures, and rising unemployment levels have created strains on the loan portfolios of many financial institutions. Median home sales continued to decline during 2009 nationally and in our primary market area, South Carolina. As a result, the need of financially distressed homeowners has put our borrowers under additional pressure. The national average unemployment rate (the unemployment rate) rose to 12.6% as of December 31, 2009, compared to 4.7% as of December 31, 2008. As of December 31, 2009, the unemployment rate in South Carolina was 12.6% compared to 9.5% as of December 31, 2008.

As a result of the current economic recession, many borrowers are unable to repay their loans, and the collateral securing these loans has, in some cases, declined below the loan balance with little or no residual value, making it difficult for financial institutions to fully recover the principal and interest owed. In addition, the rapidly deteriorating economic conditions in our country have evolved into a crisis of confidence in the safety and soundness of many financial institutions, both large and small, and investors, particularly in extreme liquidity pressure throughout the United States financial system from the sale of assets including community banks. Institutions such as ours. This pressure has caused many banks to implement leading standards, which have constrained the ability of businesses and consumers to obtain credit. Anxiety over liquidity and credit risk has grown in both the retail and wholesale banking markets, further limiting liquidity sources available to financial institutions.

The Effect of the Current Economic Environment on our Bank

Like many financial institutions across the United States and in South Carolina, our operations have been adversely affected by the current economic crisis. Beginning in 2008 and continuing through 2009, we recognized that construction, acquisition, and development real estate projects were slowing, guarantors were becoming financially stressed, and increasing credit losses were surfacing. During 2009, delinquencies over 90 days increased resulting in an increase in non-performing loans indicating significant credit quality deterioration and probable losses. In particular, loans secured by real estate, including acquisition, construction, and development projects, demonstrated stress given reduced cash flows of individual borrowers, limited bank financing and credit availability, and slow property sales. This deterioration manifested itself in our borrowers in the following ways: (i) the cash flows from underlying properties supporting the loans decreased (e.g., slower property sales for development type projects or lower occupancy rates or rental rates for operating properties); (ii) cash flows from the borrowers themselves and guarantors were under pressure given illiquid personal balance sheets and drainage by investing additional personal capital in the projects; and (iii) fair values of real estate related assets declined, resulting in lower cash proceeds from sales or fair values declining to the point that borrowers were no longer willing to sell the assets at such deep discounts.

As of December 31, 2009, approximately 90.3% of our loans held real estate as a primary or secondary component of collateral. Included in our loans secured by real estate, we have approximately \$27.8 million of A&D loans as of December 31, 2009, most of which are on properties located in the Upstate of South Carolina and Western North Carolina. A&D loans are typically completed when cash to borrowers for real estate to be developed into properties such as subdivisions, shopping centers, etc. Normally, these loans are repaid with the proceeds from the sale of the developed property. The greater degree of strain on large tracts of land and the significance of the overall loan portfolio has caused us to apply a greater degree of scrutiny in analyzing the creditworthiness and ability of amounts due. The result of these borrowers are having financial difficulties. Our analysis has resulted in a significant provision expense in order to meet the required allowance for loan loss reserve requirement.

Included in our loans secured by real estate, we have approximately \$0.5 million of average and finished or built-out loans as of December 31, 2009. These loans are comprised of loans to borrowers for raw land and lots in subdivisions that have utilities and are ready to be built on individually but not as part of an entire development project. These loans are generally repaid with the proceeds from the sale of the property. As with our A&D loans, many of these loans are in areas where there is a significant degree of strain on the market. Our analysis of these types of loans and the significance of the overall loan portfolio has caused us to apply a greater degree of scrutiny in analyzing the ultimate collectability of amounts due. Our analysis has resulted in a significant provision expense in order to meet the required allowance for loan loss reserve requirement.

The result of the above was a significant increase in the level of our non-performing assets during 2009. As of December 31, 2009, our non-performing assets equaled \$12.4 million, or 10.1% of total assets, compared to \$1.5 million, or 2.67% of assets, as of December 31, 2008. The increase in our non-performing assets led to the increase in our provision for loan losses and other non-interest-earning assets. For the year ended December 31, 2009, we recorded a provision for loan losses of \$17.0 million and net loan charge-offs of \$1.0 million, or 0.8% of average loans, as compared to a \$5.2 million provision for loan losses and net loan charge-offs of \$0.4 million, or 0.3% of average loans, for the year ended December 31, 2008. In addition, our net interest margin decreased to 2.7% for the year ended December 31, 2009 from 2.74% for the year ended December 31, 2008. In addition, we recorded a 2009 earnings loss of more than \$0.8 million compared to 2008 earnings of \$0.5 million.

The adverse economic environment has also placed us under pressure to reduce our reliance on brokered deposits, while at the same time the current low interest rate environment has been in part responsible for the increase in our reliance on brokered deposits. As of December 31, 2009, we had brokered deposits of \$2.8 billion, or 2.3% of total deposits, compared to \$1.7 billion, or 1.7% of total deposits, in the third quarter of 2008 and \$1.7 billion, or 1.7% of total deposits, as of the end of 2008. As a result of the restrictions on brokered deposits imposed by the Consent Order and our total capital and liquidity ratios as described below, we trust that our sources of liquidity to replace these deposits as they mature. Secondary sources of liquidity may include borrowings from FHLB advance lines of credit from correspondent banks. However, the current economic environment has caused our financial condition to be

currently permitted to receive any more advances. As a result, we may limit our growth, raise additional capital, or sell assets, which could materially and adversely affect our financial condition and results of operations. Additionally, deposit levels may be affected by a number of factors, including rates paid by competitors, general interest rate levels, regulatory capital requirements, returns available to customers on alternative investments and general economic conditions. Because the Bank is not well capitalized, it is subject to the 77-basis-point interest rate cap that it can pay on deposits, as more fully described below. As a result of this interest rate cap, we may not be able to attract sufficient deposits to meet our liquidity needs. If this were to occur, the Bank may be placed into a federal conservatorship or receivership by the FDIC, with the FDIC appointed as conservator or receiver.

Memorandum of Understanding

As a result of the issues stemming from the economic downturn, on June 29, 2009 the Bank entered into the MOU with the Commissioner of Banking of the South Carolina Board of Financial Institutions and the Regional Director of the FDIC's Atlanta Regional Office. The MOU requires the Bank to, among other things, (1) submit a capital plan to the supervisory authorities for returning to a "well-capitalized" designation; (2) develop specific plans and proposals to reduce nonperforming and nonaccrual assets which are subject to special asset classification and past due loans; (3) implement a loan review program to identify and correct problem commercial real estate loans; (4) develop and implement an adequate loan review program and (5) review overall liquidity of assets and develop plans and procedures to improve liquidity and reducing reliance on volatile liabilities to fund long-term assets. In addition, the Bank may not pay dividends without the prior written consent of such supervisory authority.

Since entering into the MOU, the Bank has been actively pursuing the corrective actions required by the MOU in an effort to ensure that the requirements of the MOU are met in a timely manner. For example:

- As of December 31, 2009, we are deemed to be "undercapitalized." We have developed a capital plan for returning to a "well-capitalized" designation, and we submitted this plan to the FDIC and the South Carolina Board of Financial Institutions in July 2009. Our capital plan includes: (i) reducing our overall amount of assets to align with our regulatory-based capital ratios; (ii) raising additional capital; (iii) reducing the amount of assets, we have sold, to reduce our amount of risk-based assets; and (iv) actively seeking buyers for part of our non-accrual assets. During 2009, we decreased assets by \$776 million. We are also taking prudent and proactive initiatives to strengthen the capital levels of the Bank.
- We have developed and implemented a plan to reduce our amount of classified loans by establishing an IMAC committee (Improving Problem Asset Committee) to oversee the development of workout plans for our other real estate owned (OREO) and classified loans and to explore approaches to provide additional capital to support our classified loans or to reduce the level of such loans, such as through the sale of loans to third parties. As a result, we have created a more risk-based loan review program, which we believe has reduced the amount of classified loans by 20%.
- We have implemented a plan to decrease our commercial real estate loans. Since late 2009, we have effectively ceased making new commercial real estate loans. Our strategy is to continue to sell and/or refinance a normal sale of real estate loans to other lenders, while we continue to offer limited financing when there is no other financing available. As a result, the amount of commercial real estate loans has decreased from \$151.6 million at December 31, 2008 to \$126.1 million at December 31, 2009.
- We have developed and implemented an improved loan review process, which includes the hiring of a new loan review officer and the engagement of a new external loan review firm. The new external review firm has been engaged to review specific loans and the overall loan portfolio.
- On September 30, 2009, we submitted to the FDIC and the FDIC's Atlanta Regional Office and the South Carolina Board of Financial Institutions Management Policies and Procedures for the Bank's liquidity plan. The plan includes our reliance on noncore funding sources over the next 12 months. We are currently reviewing the plan.

years of operations, which we funded with a combination of local deposits and wholesale funding, including brokered deposits. As of December 31, 2009, we are deemed to be "undercapitalized" and, as a result, can no longer accept, renew or roll over brokered deposits without the prior consent of the FDIC. Thus, we are actively focused on eliminating brokered deposits from our balance sheet. During 2009, we improved the Bank's liquidity position by raising approximately \$68 million in new local deposits.

In addition, in mid-February 2010 the Bank received a supervisory letter from the FDIC dated February 11, 2010, which provided for additional restrictions and mandatory actions to be taken by the Bank. These restrictions and actions were all substantially addressed by the subsequent Consent Order discussed below. However, in order to comply with supervisory letter, the Bank must prepare and submit to the FDIC a capital restoration plan no later than March 25, 2010, which submission date is sooner than a similar requirement under the Consent Order.

Consent Order

Following the FDIC's safety and soundness examination of the Bank in the fourth quarter of 2009, the Bank entered into the Consent Order with the FDIC and the South Carolina Board of Financial Institutions on February 23, 2010. The Consent Order, which supersedes the MOU, conveys specific actions needed to address certain findings from the FDIC's report of examination and to address the Bank's current financial condition, primarily related to policy and planning issues, management oversight, loan concentrations and classifications, non-performing loans, liquidity/funds management, and credit planning.

Under the terms of the Consent Order, the Bank's various sources of liquidity will be restricted. Based on information included in the FDIC's report, the Bank's credit risk rating at the 11/13 has been negatively impacted, resulting in reduced borrowing capacity. This action also restricts the Bank's ability to accept, renew, or roll over brokered deposits. In addition, the Bank's ability to borrow funds from the Federal Reserve Bank Discount Window as a source of short-term liquidity is not guaranteed. The Federal Reserve Discount Window borrowing capacity has been curtailed to only overnight terms, contingent upon credit approval for each transaction.

In addition, the Consent Order requires the Bank to, among other things,

- establish, within 30 days from the effective date of the Consent Order, a plan to monitor compliance with the Consent Order, which shall be monitored by the Bank's Board of Directors;
- ensure the Bank has qualified management in place to carry out the policies of the Bank's Board of Directors and to operate the Bank in a safe and sound manner;
- achieve and maintain, within 130 days from the effective date of the Consent Order, Total Risk Based Capital of at least equal to 10% of risk-weighted assets and Tier 1 capital not less than to be equal to assets;
- determine, within 30 days of the last day of the calendar quarter, its capital ratios. If any capital measure falls below the established minimum, within 30 days provide a written plan describing the manner and timing by which the Bank shall bring such ratios to or in excess of the established minimums;
- develop, within 45 days from the effective date of the Consent Order, a written analysis and assessment of the Bank's management and staffing needs;
- establish, within 60 days from the effective date of the Consent Order, a comprehensive policy for determining the adequacy of the Bank's allowance for loan and lease losses, which shall include a review of the Bank's allowance for credit losses and lease losses at least once each calendar quarter;
- enhance, within 60 days from the effective date of the Consent Order, our written plan for the reduction of classified assets, which shall include, among other things, a review of the Bank's portfolio of assets in excess of \$250,000 that are classified as "Substandard" or "Doubtful";
- not extend any additional credit to any borrower who has a loan or other extension of credit from the Bank that has been charged off or classified, in whole or in part, "nonaccrual" and, in addition, the Bank may not extend any additional credit to any borrower who has a loan or other extension of credit from the Bank that has been classified, in whole or in part, "substandard" and is uncollected, unless the Bank's Board of Directors determines that failure to extend credit to a particular borrower would be detrimental to the Bank's operations;
- perform, within 45 days from the effective date of the Consent Order, a credit segmentation analysis with respect to the Bank's Concentrations of Credit and a written plan to systematically review any segment of the portfolio that is an outlier.

concentration of credit;

- revise, within 60 days from the effective date of the Consent Order, the Bank's internal loan review and grading system to provide for the periodic review of the Bank's loans portfolio in order to identify and categorize the Bank's loans, and other extensions of credit which are carried on the Bank's books as loans, on the basis of credit quality;
- formulate and implement, within 60 days from the effective date of the Consent Order, a profit plan and comprehensive budget for all categories of income and expense, which must address, at minimum, goals and strategies for improving earnings of the Bank, the major areas in and means by which the Bank will seek to improve the Bank's operating performance, and the operating assumptions that form the basis for and adequately support major projected income and expense components of the plan;
- enhance, within 60 days from the effective date of the Consent Order, our written funds management plan addressing liquidity, contingent funding, and asset liability management;
- not accept, renew, or roll over any borrowed deposits. The Bank must develop and submit to the FDIC, within 30 days from the effective date of the order, a plan for eliminating all borrowed deposits. In addition, the Bank cannot offer an effective yield in excess of 75 basis points on interest-earning deposits (including brokered deposits, if approval is received for the Bank to accept them) of any variable size and term that is not in the Bank's normal course of business and that would otherwise be accepted. Thus, for example, if the Bank's current offer for a 12-month term deposit is in excess of 75 basis points over the average 12-month rate for such deposits, the Bank must offer a rate that is not in excess of 75 basis points over either (1) the Bank's own rate for such deposits or (2) the applicable market rate;
- not declare or pay any dividends or bonuses or make any distributions of interest, principal, or other assets or debentures without the prior approval of the supervisory agencies;
- furnish, by within 45 days from the effective date of the Consent Order and within 45 days of the end of each quarter thereafter, written progress reports to the agencies detailing the progress of the Bank in complying with the various provisions taken under the Consent Order.

Going Concern Considerations

Due to the conditions and events discussed above and highlighted in this report on Form 10-K, substantial doubt exists as to our ability to continue as a going concern. We have incurred, and may incur, additional losses of liquidity and capital to continue operations through 2010 and beyond. We have engaged financial advisors to assist the Company in its efforts to raise additional capital, sell assets, and other strategies to address the liquidity and capital needs of the Company. To date, those efforts have not yielded any significant results. In addition, our regulators are continuing to monitor our liquidity and capital adequacy. In addition, our regulators use various enforcement tools available to them, including directives, orders to cease engaging in certain activities, and other actions that may be necessary to ensure the safety and soundness of the Company.

Notwithstanding the above, accompanying consolidated financial statements have been prepared on a going concern basis, which contemplates the realization of assets and the discharge of liabilities in the normal course of business for the periods presented. These financial statements do not include any adjustments to reflect the possible future effects of the uncertainties surrounding the liquidity and capital needs of the Company, or the classification of liabilities that may result should we become unable to meet our obligations.

Current Business Strategy

In addition to the actions required by the Consent Order, we have taken other proactive and defensive actions in an effort to ensure that the regulatory requirements of the Consent Order are met. Specifically, we are currently focusing our efforts in the following areas:

- **Increasing and Strengthening Our Capital Base:** As of December 31, 2006, the Bank's liquidity position, as measured by the FDIC's "Liquidity Coverage Ratio," has decreased and we are currently working to increase and preserve our capital with the goal of returning to a "Satisfactory" rating. The

initiatives include, among other things, restructuring the Bank's balance sheet by limiting new loan activity, attempting to sell certain real estate related loans and other assets. We also intend to raise additional capital through a capital raise in the first or second quarter of 2010. Additionally, we are actively evaluating a number of balance sheet management strategies to ensure that our projected level of regulatory capital can support our balance sheet minimum requirements.

Managing and Improving Asset Quality.

The economic recession and the deterioration of the housing and real estate markets have had an adverse impact on the credit quality of our loan portfolio. In response, our Bank intends to significantly reduce the amount of its non-performing assets hurt our profitability because they reduce the balance of earning assets, may require additional loan workouts, and require significant devotion of staff time and financial resources to resolve. We believe our strategy aggressively addresses these issues. For example,

- In February of 2009, we restructured our credit administration and loan operations department and assigned a credit officer to oversee the entire asset classification process and procedures in this area.
- In June of 2009, we established an Internal Audit Asset Committee to assist Bank mortgage development, management strategy, and in liquidation of problem assets. We are currently preparing to sell Bank-owned properties and problem assets to outside investors.
- In January of 2009, we implemented a process for the continuous review of all classified loans, particularly those over \$50,000, and any other potential risky loans and applied non-sensitive risk grading.
- Throughout 2009, we conducted client focused workout strategies to make and track our progress, develop workout plans, implementation of every step, and document required progress updates.
- Throughout 2009, we maintained high liquidity reserves in certain areas given the risk profile of our assets.
- In May of 2009, we implemented a risk-focused internal and external loan review program.
- During 2009, we plan to create a special loan workout department to focus on resolving and enhance staffing and expertise in this area.

Decreasing Concentration in Our Loan Portfolio.

We are focused on reducing our concentration in commercial real estate (CRE), specifically acquisition and construction loans, and residential construction loans. Since January 2009, we have effectively ceased the while proactively decreasing the level of our existing loan types. We have worked to diversify our originations including (1) the originations with outside real estate investors, (2) the originations with outside investors, (3) by proactively seeking out other originators, (4) by actively seeking out other originators, (5) by encouraging franchisees to originate more originations and (6) by originating when cash loans are more available. Our amount of CRE loans decreased to \$50.1 million of our total loan portfolio at December 31, 2009 from \$100 million at December 31, 2008. We have also reduced our residential construction portfolio from \$50 million at December 31, 2008 to \$10 million at December 31, 2009. We expect our commercial real estate portfolio to continue to decrease in 2010 through the disciplined execution of the plans outlined above.

Reducing Operating Expenses.

We have always remained focused on reducing expenses to ensure more efficient overhead. During 2010, management intends to further reduce costs in a number of areas, including but not limited to, the areas mentioned below. Given the economic recession, we have embarked on an extensive program to reduce our operating expenses by reducing staff, reducing expenses, and reducing overhead. We will continue to evaluate our operating expenses and we will continue to evaluate our operating expenses. Reducing our level of operating expenses is a key strategy to ensure we remain profitable.

Enhancing Funds Management at 12/31/2009.

We have grown rapidly since our inception in 2007 and have historically funded our asset growth through deposits and wholesale funding. As of December 31, 2009, we had \$100 million in deposits, representing 53.8% of our total capital of \$185.7 million and scheduled to mature in the next 12 months are \$40 million in our current period.

aggressively through a planned asset sales and balance sheet management and meet or

impact on the credit quality of our assets. Non-performing assets may require additional provisions or write-downs and require significant deviation of staff time and financial resources to resolve. We believe our strategy aggressively addresses these issues.

hired a skilled chief executive officer to lead the company and seeking avenues to

to loans, past due loans, and delinquent loans, and the execution of

and to loan work-outs

development and originations of any new CRE loans. Our CRE portfolio is a result of these efforts, which decreased 84% from \$33.8 million in 2008 to \$5.0 million in 2009.

management intends to further reduce costs in a number of areas, including but not limited to, the areas mentioned below. We will continue to evaluate our operating expenses and we will continue to evaluate our operating expenses.

the combination of local deposits and wholesale funding. As of December 31, 2009, we had \$100 million in deposits, representing 53.8% of our total capital of \$185.7 million and scheduled to mature in the next 12 months are \$40 million in our current period.

2010. Because of the limitations on brokered deposits imposed by the Consent Order and our undercapitalized status, the Bank may no longer accept, renew, or roll over brokered deposits as they mature. We have amended our funds management policy to reflect our intent to continue to improve our use of brokered deposits and other non-core funding sources. Our funds management policy also includes assets, certain loans, and other Bank-owned real estate. We plan to reduce our brokered deposit usage by comprehensive deposit acquisition program, which creates an environment of consistent deposit growth through relationship banking, advocate-based selling and an aggressive, focused calling program. Our experienced team of sales and marketing professionals is actively cross-selling core deposits to our local depositors and borrowers, and is held accountable for production through weekly sales meetings. Production is enhanced by our relationship-based culture training, which includes advanced cross-selling techniques and one-on-one coaching. We also plan to generate local deposits through a combination of competitive pricing, customer service excellence, and targeted marketing campaigns.

Enhancing Our Bank's Relationship Culture

While the bulk of our strategic plan focuses on strategies to survive the prolonged economic recession, we must also place the best interests of our customers at the center of our business. Our strategy is centered on enhancing the Bank's culture to ensure that all employees understand and place the best possible to provide financial and customer service opportunities through relationship banking strategies. Our primary strategy is to implement the following:

- implementing consistent customer service standards and guidelines in all areas of the Bank;
- training and certifying the non-branch-based staff and branch staff to all employees;
- ensuring all employees are engaged and motivated by enabling them to own customer service by conducting quarterly employee performance reviews;
- implementing consistent management standards for all supervisors resulting in internal and external advocacy;
- refining the Bank's customer experience metrics, including branch mystery shopping and customer survey programs and encouraging top performing employees to share the Bank's competitive advantages.

We will continue to serve customers in all areas, including access to lines of credit. All customer deposits are insured by the FDIC up to the FDIC limit of \$250,000 per depositor, per insured depository institution, for each account. Under this program, all FDIC-insured depository institutions are required to provide a written disclosure of the FDIC's insurance coverage for each account. The guarantee also applies to FDIC-insured depository institutions in addition to and separate from the existing FDIC-insured depository institutions.

However, should we fail to comply with the capital requirements in our financial condition, we may be subject to the FDIC's appointment of a receiver.

Recent Legislative and Regulatory Initiatives to Address the Economic Crisis

Markets in the United States and elsewhere have experienced circumstances have resulted in a significant loss of investor confidence, an overall loss of investor confidence, and a weak economy and financial markets. In part to falling home prices and increasing foreclosures, many borrowers are now unable to repay their loans, resulting in large losses to the financial services industry.

management recognizes that planning has also placed the Bank in the best position to take advantage of the advocate-based selling and relationship banking strategies. Our primary strategy is to implement the following:

the Bank's competitive advantages, including branch mystery shopping and customer survey programs and encouraging top performing employees to share the Bank's competitive advantages.

the Bank's competitive advantages, including branch mystery shopping and customer survey programs and encouraging top performing employees to share the Bank's competitive advantages.

Recent Legislative and Regulatory Initiatives to Address the Economic Crisis

Markets in the United States and elsewhere have experienced circumstances have resulted in a significant loss of investor confidence, an overall loss of investor confidence, and a weak economy and financial markets. In part to falling home prices and increasing foreclosures, many borrowers are now unable to repay their loans, resulting in large losses to the financial services industry.

zed status, the Bank may face these deposits as they mature and reduce our plan to reduce our use of brokered deposits by comprehensive deposit acquisition program, which creates an environment of consistent deposit growth through relationship banking, advocate-based selling and an aggressive, focused calling program. Our experienced team of sales and marketing professionals is actively cross-selling core deposits to our local depositors and borrowers, and is held accountable for production through weekly sales meetings. Production is enhanced by our relationship-based culture training, which includes advanced cross-selling techniques and one-on-one coaching. We also plan to generate local deposits through a combination of competitive pricing, customer service excellence, and targeted marketing campaigns.

management recognizes that planning has also placed the Bank in the best position to take advantage of the advocate-based selling and relationship banking strategies. Our primary strategy is to implement the following:

the Bank's competitive advantages, including branch mystery shopping and customer survey programs and encouraging top performing employees to share the Bank's competitive advantages.

the Bank's competitive advantages, including branch mystery shopping and customer survey programs and encouraging top performing employees to share the Bank's competitive advantages.

Recent Legislative and Regulatory Initiatives to Address the Economic Crisis

Markets in the United States and elsewhere have experienced circumstances have resulted in a significant loss of investor confidence, an overall loss of investor confidence, and a weak economy and financial markets. In part to falling home prices and increasing foreclosures, many borrowers are now unable to repay their loans, resulting in large losses to the financial services industry.

- The Emergency Economic Stabilization Act of 2008 ("EESA") approved by Congress and signed by President Bush on October 3, 2008, which, among other provisions, allowed the U.S. Treasury to purchase up to \$700 billion of mortgage-backed securities and certain other financial instruments from financial institutions for the purpose of stabilizing the U.S. financial markets. EESA also temporarily raised the basic limit of FDIC deposit insurance from \$100,000 to \$250,000.
- On October 7, 2008, the FDIC approved a plan to increase the rates banks pay for deposit insurance;
- On October 14, 2008, the U.S. Treasury announced the creation of a new program, the Troubled Asset Relief Program (the "TARP") to encourage and allow financial institutions to build capital by selling preferred shares to the U.S. Treasury on terms that are non-negotiable;
- On October 14, 2008, the FDIC announced the creation of the Temporary Liquidity Guarantee Program ("TLGP"), which seeks to strengthen confidence and encourage liquidity in the financial system. The TLGP has two primary objectives:
 - The Transaction Account Guarantee Program ("TAGP"), which provides unlimited deposit insurance through December 31, 2009 for noninterest-bearing transaction accounts (typically business checking accounts) swept into noninterest-bearing sweep accounts. Institutions participating in the TLGP pay a 10 basis point fee (annualized) on the balance of each covered account in excess of \$250,000, while the extra deposit insurance is in place. This program was extended until December 31, 2010.
 - The Debt Guarantee Program ("DGP"), under which the FDIC guarantees certain senior unsecured debt of FDIC-insured institutions and their holding companies. The covered debt must be issued on or after October 1, 2008 and on or before June 30, 2009, and fully guaranteed coverage is provided until the maturity date. The DGP coverage limit is generally \$100 million, but may be up to \$1 billion for debt issued on or before September 30, 2008, or before June 30, 2009, of an unaffiliated institution, 2% of their liabilities as of September 30, 2008, or before June 30, 2009, of an affiliated institution. Depending on the term of the debt maturity, the normal available DGP fee ranges from 50 to 100 basis points (annualized) and the earlier of maturity or June 30, 2012. The TAGP and DGP are in effect for the entire period of coverage for the covered debt.
- On February 10, 2009, the U.S. Treasury announced the Troubled Asset Relief Program, which earmarked \$350 billion of the TARP funds authorized under EESA. Among other things, the Troubled Asset Relief Program includes:
 - A capital assistance program that will allow the Treasury to purchase into preferred stock of certain determinable financial institutions and other entities;
 - A consumer and business lending facility to help small businesses, small business loans and asset-backed securities issuances;
 - A new public-private investment corporation with leverage public and private capital with public investment of \$500 billion to \$1 billion of legacy toxic assets of troubled financial institutions and
 - Assistance for home owners by providing up to \$75 billion to assist with mortgage payments and refinancing modification guidelines for government insured mortgages.
- On February 17, 2009 President Obama signed the American Recovery and Reinvestment Act, which includes a wide variety of provisions intended to stimulate the economy and provide relief to individuals and businesses. The Act includes provisions that impose certain new disclosure requirements on banks and other financial institutions. In addition to those provisions, the Act also includes provisions that require the FDIC to provide certain financial information to the Treasury, which is now being used under the Troubled Asset Relief Program and other programs. The Act also includes provisions intended to provide relief to certain financial institutions and other entities.

systemic risks, supervise and regulate financial products and markets, and to resolve firms that threaten financial and international regulatory standards and improve international cooperation.

(v) and (vi) raise

The Proposal includes the creation of a new federal government agency, the National Bank Supervisor ("NBS") to supervise all federally chartered depository institutions, and all federal branches and agencies of foreign banks. It takes over the responsibilities of the Office of the Comptroller of the Currency, which currently chartered and supervised banks, and the responsibility for the institutions currently supervised by the Office of Thrift Supervision, which supervised savings institutions and federal savings institution holding companies.

old charter and provided that the NBS would supervise nationally chartered banks and federally chartered savings institutions.

The Proposal also includes the creation of a new federal agency designed to enforce consumer protection laws. The Consumer Financial Protection Agency ("CFPA") would have authority to protect consumers of financial products and services and to supervise all providers (bank and non-bank) of such services. The CFPA would be authorized to adopt rules for all providers of consumer financial products and services, examine such institutions for compliance, and to impose civil and criminal penalties. The rules of the CFPA would serve as a "floor" and individual states would be permitted to adopt laws that are stronger consumer protection laws. If adopted, the CFPA would become subject to multiple laws affecting its provision of financial and other credit services to consumers, which may increase the cost of providing such services.

Consumer Financial Protection Agency would have authority to supervise all providers (bank and non-bank) of such services, and the CFPA would serve as a "floor" and individual states would be permitted to adopt laws that are stronger consumer protection laws.

On February 2, 2010, President Obama called on Congress to create a new Small Business Lending Fund. The Lending Fund would be transferred to a new program inside of TARP to support small business lending. As proposed, medium-sized banks would qualify to participate in the program.

proposal, \$30 billion in TARP funds to support small- and medium-sized banks.

New regulations and statutes are regularly proposed that contain wide-ranging proposals for altering the structures, competitive relationships of the nation's financial institutions. We are not predicting when or if any particular proposal will be adopted or the extent to which our business will be affected by any new regulatory or statute.

regulations, and the regulation or statute.

Results of Operations

Results of operations are only presented for the years ended December 31, 2009 and 2008.

Net interest income increased \$108,900, or 4.97%, to \$2,316 million in 2009, up from \$2,207 million in 2008. The primary driver of the increase in net interest income in 2009 was an increase in loans, net of provision, of \$668,417, or 11.70%, as compared to \$204.2 million in 2008. The increase in net interest income was due primarily to a decrease in net interest expense, resulting in lower interest expense.

component of net interest income increase in net interest income.

The Company's net interest spreads were 2.40% and 2.27% in 2009 and 2008, respectively. The Company's net interest spread in 2009 was 0.13% higher than in 2008 due to the average interest bearing liability rate of 3.94% in 2009 as compared to 4.07% in 2008. The decrease in yield and a decrease in net interest spread of 12 basis points, or 0.52%, for 2009 as compared to 2008 was 0.3% of average interest bearing liabilities in 2009.

net interest margins were 2.73% in 2009. Rates on deposits increased in a net 100 basis points in 2009 and 2008.

The provision for loan losses was \$13.0 million in 2009, compared to \$7.2 million in 2008. The changes to the provision for loan losses at a level sufficient to cover estimated losses inherent in the loan portfolio, given the current economic conditions which has affected the credit quality of our loans, and the increase in the provision for loan losses, which indirectly rely on the borrower's ability to repay, were primarily due to an increase in the provision for loan losses in 2009.

provision were to maintain the economic downturn and that directly or indirectly affect the borrower's ability to repay.

Non-interest income increased \$1.3 million, or 95.62%, to \$2.7 million in 2009, up from non-interest income of \$1.4 million in 2008. The increase in non-interest income is primarily attributable to the sale of the company's investment portfolio. The \$1.3 million increase in non-interest income in 2009 was primarily due to the sale of the company's investment portfolio, which resulted in a net gain of \$239,000, or 5.55%, which was 2.00% of the average earning assets in 2009. The increase in non-interest income in 2008 was primarily due to loan originations, interest from other assets, and the sale of the company's investment portfolio. The company also executed a sale of its bank-owned real estate in 2008, which resulted in a net gain of \$1.1 million, or 18.61%, to \$380,000 in 2008, as compared to a net loss of \$1.1 million, or 2.00%, of \$321,000 in 2008, due to the sale of deposit accounts.

non-interest income in 2008. The increase in non-interest income was primarily due to the sale of the company's investment portfolio. The Company also executed a sale of its bank-owned real estate in 2008, which resulted in a net gain of \$1.1 million, or 18.61%, to \$380,000, or 5.55%, of the average earning assets in 2008.

Non-interest expense increased \$4.2 million, or 43.3%, to \$13.3 million in 2009, compared to non-interest expense of \$9.1 million in 2008. Salaries and employee benefits increased \$407,000 to \$8.2 million for the year ended December 31, 2009. This increase is primarily due to the growth of the mortgage division. FDIC insurance premiums totaled \$1.1 million for the year ended December 31, 2009, compared to \$226,000 in 2008. The increase in the FDIC assessment includes increased annual premiums by the FDIC due to the increase in our deposit base and our current financial condition as well as a one-time FDIC insurance premium that equated to a \$178,000 charge to the income statement in 2009. The Company also had a writedown to Other Real Estate Owned and Repossessed Collateral of \$2.0 million for the year ended December 31, 2009. The Company's efficiency ratio was 102.4% in 2009 compared to 82.5% in 2008. The efficiency ratio is defined as non-interest expense divided by the sum of net interest income and non-interest income, net of gains and losses. The deterioration in our efficiency ratio is primarily attributable to the increased expenses described above.

The Company's net loss was \$18.3 million in 2009, compared to net loss of \$3.4 million in 2008. The significant increase in the net loss in 2009 was primarily due to the increase in the provision for loan losses which increased \$9.8 million to \$17.0 million for the years ended December 31, 2009 and 2008, respectively. Return on assets for 2009 was -0.87% compared to 0.13% in 2008. Net loss in 2009 was after an income tax expense of \$1.1 million compared to \$1.8 million in 2008. The income tax expenses for 2009 and 2008 result in effective tax rates of 5.74% and 35.0%, respectively. The effective tax rate computed on the pretax loss was reduced by 0.5% in 2009 due to the recognition of a 100% valuation allowance on the deferred tax assets. See Notes 1 and 13 to the consolidated financial statements for more information on the provision for loan losses and the income tax expense.

Net Interest Income

General. The largest component of the Company's net interest income is interest income, which is the difference between the interest earned on assets and interest paid on deposits and borrowings used to support such assets. Net interest income is determined by the Company's interest-earning assets and the rates paid on its interest-bearing liabilities, net of an allowance for credit losses on interest-earning assets and interest-bearing liabilities. The interest-earning assets include interest-earning assets representing loans and investments. The net interest spread is the difference between the interest earned on interest-earning assets and the interest paid on interest-bearing liabilities. If the general level of interest rates falls, the net interest spread will narrow, resulting in a reduction in net interest income. For more information on the Company's net interest income, see Note 10 to the consolidated financial statements.

Rate/Volume Analysis. Net interest income can be analyzed in terms of the impact of changing interest rates and changes in the volume of interest-earning assets and interest-bearing liabilities. The following table sets forth the effect which the varying levels of interest-earning assets and interest-bearing liabilities have had on changes in the net interest income for the period presented.

(Dollars in thousands)	December 31, 2009		December 31, 2008		December 31, 2007	
	2009	2008	2008	2007	2007	Total
Interest Income						
Loans (1)	\$ 10,712	\$ 12,154	\$ 12,270	\$ 14,794	\$ 14,794	(847)
Investment securities (2)	1,647	1,533	1,533	1,533	1,533	(209)
Federal funds	93	1,111	1,111	1,549	1,549	298
Total Interest Income	<u>\$ 12,452</u>	<u>\$ 14,798</u>	<u>\$ 14,914</u>	<u>\$ 17,876</u>	<u>\$ 17,876</u>	<u>(758)</u>
Interest Expense						
Deposits	\$ 1,161	\$ 987	\$ 1,122	\$ 1,232	\$ 1,232	(241)
Other borrowings	1,274	1,223	1,103	1,076	1,076	(7)
Total Interest Expense	<u>\$ 2,435</u>	<u>\$ 2,210</u>	<u>\$ 2,225</u>	<u>\$ 2,308</u>	<u>\$ 2,308</u>	<u>248</u>
Net Interest Income	<u>\$ 9,997</u>	<u>\$ 12,588</u>	<u>\$ 12,689</u>	<u>\$ 15,568</u>	<u>\$ 15,568</u>	<u>\$ (510)</u>

- (1) For the purpose of this table, loans include non-accrual loans as well as those loans where the payment of interest is in doubt.
- (2) For the purpose of this table, the investment securities include all available-for-sale and held-to-maturity securities.



Interest Sensitivity. The Company monitors and manages the pricing and maturity of its assets and liabilities in order to minimize the potential adverse impact that changes in interest rates could have on its net interest income. The principal measure the Company uses to manage its interest rate risk is the measurement of the Company's interest sensitivity "gap", which is the positive or negative difference between assets and liabilities that are subject to interest rate repricing within a given period of time. Interest rate sensitivity is managed by repricing assets or liabilities, selling securities available for sale, replacing an asset or liability at maturity, or adjusting the amount of assets and liabilities repricing in this same time interval to minimize the impact on net interest income of rising or falling interest rates.

to diminish the technique employed by difference between managed by the interest rate during to hedge the risk and

The following table sets forth the Company's interest rate sensitivity at December 31, 2009.

(Dollars in thousands)	Within Three Months	After Three Through Twelve Months	One Through Five Years	After Five Years	Total
Assets					
Earning assets:					
Loans, gross	\$ 182,109	\$ 20,155	\$ 99,875	\$ 1,134	\$ 275,104
Investment securities, available for sale	—	—	—	1,638	103,638
Other investments	—	—	—	1,599	1,599
Fed funds	31,043	—	—	—	31,043
Total earning assets	213,152	20,155	99,875	2,771	411,384
Liabilities					
Interest-bearing liabilities:					
Interest-bearing deposits:					
Repurchase agreements	—	15,000	—	1,000	30,000
Other borrowings	—	—	—	1,325	4,325
Demand deposits	18,588	—	—	—	18,588
Savings deposits	1,295	—	—	—	82,295
Time deposits	1,128	229,363	4,520	—	253,851
Total interest-bearing liabilities	21,031	244,363	4,520	1,325	389,059
Period gap	\$ 192,121	\$ (224,208)	\$ 95,355	\$ 1,446	\$ 22,325
Cumulative gap	\$ 192,121	\$ (49,087)	\$ (47,732)	\$ 1,446	\$ 22,325
Ratio of cumulative gap to total earning assets	15.15%	(19.35)%	(16.91)%	5.43%	

The above table reflects the balances of interest-earning assets and interest-bearing liabilities as the earlier of their maturity or repricing dates. Overnight federal funds are reflected at the earliest repricing interval due to their immediate availability for use. Scheduled payment amounts of fixed rate amortizing loans are reflected for each scheduled payment date. Scheduled payment amounts of variable rate amortizing loans are reflected at each scheduled payment date until the loans may be repriced; until that time, the unamortized balance is reflected at that point. Interest-bearing liabilities with contractual maturities, such as savings deposits and time deposits, are reflected in the earliest repricing period. Repurchase agreements with the ability to be extended or terminated, and other borrowings which may vary the maturity on those deposits within a thirty-day or shorter period, are reflected in the repricing period. Time deposits, primarily certificates of deposit, are reflected at their contractual maturity date.

ing or maturity instruments. Scheduled payment amounts of the unamortized interest-bearing deposits may be repriced by the opportunity to

The Company generally would benefit from increasing market rates of interest when in the asset sensitive gap position and generally would benefit from decreasing market rates of interest when in the liability sensitive gap position. The Company is generally asset sensitive over the three-month to twelve-month period and asset sensitive over all periods greater than one year. However, the Company's interest rate risk position is sensitive to changes in the level of its interest rate risk. The analysis presented is only a review of the Company's interest rate risk and does not constitute a forecast of future interest rate movements. Net interest income may be impacted by other significant factors, such as changes in the amount and mix of earning assets and interest-bearing liabilities.

and generally asset sensitive over the long term. The Company's gap analysis is not a forecast of future repricing. Net interest income is dependent on the amount and mix of earning

Provision and Allowance for Loan Losses

General. The Company has developed policies and procedures for evaluating the overall quality of its credit portfolio, identification of potential problem loans. On a quarterly basis, the Company's Board of Directors reviews and approves for the Company's allowance for loan losses based upon management's recommendations, the results of the internal system, and an analysis of economic conditions in its market.

In addition to the Company's portfolio review process, various regulatory agencies periodically review the Company's allowance for loan losses. These agencies may require the Company to recognize additions to the allowance for loan losses based on information available to them at the time of their examinations. While the Company uses available information to adjust its allowance for loan losses, future adjustments to the allowance for loan losses may be necessary based on changes in economic conditions and the impact of such changes and other factors on the Bank's borrowers.

Portions of the allowance for loan losses may be allocated for specific loans or portfolio segments. However, the allowance is available for any loan that, in management's judgment, should be charged-off. In management's judgment, based on information available to it, the allowance for loan losses is adequate based on a variety of factors, including the performance of the Company's loan portfolio, the economy, changes in interest rates, and the regulatory authorities' views on loan classifications.

In addition to the allowance for loan losses, which are expensed through the provision for loan losses on the Company's income statement, management periodically makes adjustments to the allowance for loan losses based on management's analysis of the entire loan portfolio. Loan losses and recoveries are charged to or credited against the allowance. The amount of charge-offs is dependent on the level of loans outstanding, the level of non-performance, historical loan loss experience, the amount of loans charged against the reserve during a given period, and current and anticipated economic conditions.

The Company's allowance for loan losses is based on judgments and assumptions about risk elements in the portfolio, and other factors affecting loan losses. Management periodically reviews and analyzes the composition of the portfolio utilizing a credit risk grading process and other methods of assessing credit risk. Management does not use a precise method of estimating credit losses, since they are inherently uncertain and are the result of future events. In addition, due to our rapid growth over the past several years and our limited experience with the loans in our loan portfolio that were originated recently, in general, loans do not begin to show signs of credit deterioration until they have been outstanding for some period of time. Management usually believes more problems will arise with loans that have been outstanding for some period of time. Defaults may not be a precise indicator of the level of credit risk, as they are based on historical trends. If charge-offs in a given period are significantly higher than historical trends, we may increase our allowance for loan losses, which may decrease our net income and possibly our capital.

Based on present information and management's evaluation, management considers the allowance for loan losses to be adequate to cover probable losses in the Company's loan portfolio. However, changes in economic conditions, the impact of regulatory agencies, and other factors may affect the allowance for loan losses. Management is not aware of any factors that would cause management to change its assumptions. There are no assumptions of any nature that would cause management to change its assumptions. Management's assumptions may change if there are changes in the economic conditions or if there are changes in the quality of the commercial real estate market or in the credit quality of the Company's loan portfolio. Management's assumptions may change if there are changes in the economic conditions or if there are changes in the quality of the commercial real estate market or in the credit quality of the Company's loan portfolio. Management's assumptions may change if there are changes in the economic conditions or if there are changes in the quality of the commercial real estate market or in the credit quality of the Company's loan portfolio.

The following table sets forth certain information with respect to the Company's allowance for loan losses and charge-offs and recoveries for the five years ended December 31, 2009.

and the timely
of the appropriate level
of monitoring and reporting

allowance for loan
judgments and
to measure inherent losses
and other factors

allowance for loan
management judgment and
of the Company's
of the regulatory

income statement, are
inherent in the
is a function of the
actually charged

economic
of the portfolio
However, there is no
depends on the
of the portfolio, a large portion of
of non or default until
of future loans will
of delinquencies and
of higher than current
and decrease our net

to meet
of periods by changes
of which was not
of management's
of the allowance for
of general weakness in the
of the continuation of the
of loans to the
of cash flows.

of the disposition of charge-offs

Allowance for Loan Losses

(Dollars in thousands)

	2009	2008	2007	2006	2005
Total loans outstanding at end of period	\$ 275,104	\$ 239,907	\$ 212,934	\$ 194,144	\$ 115,704
Average loans outstanding	\$ 305,472	\$ 315,175	\$ 264,844	\$ 231,117	\$ 63,985
Balance of allowance for loan losses at beginning of year	\$ 8,088	\$ 4,214	\$ 3,091	\$ 2,558	\$ —
Loans charged off:					
Real estate — construction	6,871	3,112	15	—	—
Real estate — mortgage	3,885	120	—	—	—
Commercial and industrial	1,841	—	—	—	—
Consumer and other	243	67	54	—	—
Total loan losses	12,840	3,294	69	—	—
Recoveries of previous loan losses:					
Real estate — construction	477	—	4	—	—
Real estate — mortgage	—	—	—	—	—
Commercial and industrial	1	—	—	—	—
Consumer and other	22	—	—	—	—
Total recoveries	500	—	4	—	—
Net charge-offs	12,340	3,294	65	—	—
Provision for loan losses	15,428	7,168	1,788	2,533	1,558
Balance of allowance for loan losses at end of year	\$ 23,728	\$ 8,088	\$ 4,214	\$ 2,558	\$ 1,558
Net charge-offs to average loans outstanding	4.03%	1.01%	0.02%	—%	—%

Our allowance for loan losses totaled \$13.0 million at December 31, 2009 compared with \$8.1 million at December 31, 2008, representing 4.77% and 3.32% of gross loans, respectively. The December 31, 2009 allowance for loan losses, and, therefore, the provision for loan losses for the year ended December 31, 2009, was determined based on the following specific factors, though not limited to:

- The impact of the ongoing depressed overall economic environment, including those within our geographic footprint.
- The cumulative impact of the extended duration of this economic deterioration on our borrowers, in particular those with real estate related loans.
- The declining asset quality trends in our loan portfolio.
- The increasing level of the higher and loan loss ratios within our loan portfolio.
- The results of our internal and external loan reviews during the second, third and fourth quarters of 2009, including downgrades.
- Our internal and external impaired loan analysis which identified:
 - Increased stress on borrowers given loan-to-value ratios of 100-120% and limited liquidity and asset collateral.
 - Continued downward trends in appraised values of loans for assumptions used to value real estate related loans.

Non-performing Assets

Non-accrual Assets. There were \$29.4 million and \$9.9 million of non-accrual loans at December 31, 2009 and December 31, 2008, respectively. There were \$5.3 million and \$6,035 of loans past due 90 days or more and still accruing interest on December 31, 2009 and 2008, respectively. Other Real Estate Owned and Repossessed Collateral totaled \$15.77 million at December 31, 2009 and \$1.2 million at December 31, 2008, respectively. There was \$4.2 million of repossessed collateral at December 31, 2009 and none at December 31, 2008.

The table below summarizes non-performing assets for the following period at December 31, 2009:

(Dollars in thousands)	2009	2008	2007	2006	2005
Non-accrual loans	\$ 29,400	\$ 9,915	\$ 35	\$ 14	\$ —
Loans past due 90 days or more and still accruing	5,300	6,035	—	—	—
Other Real Estate Owned and Repossessed Collateral	15,770	1,200	—	—	—
Restructured loans	4,759	—	—	—	—
Total non-performing assets	\$ 55,229	\$ 17,150	\$ 35	\$ 14	\$ —

The increase of \$19.5 million in non-performing loans from December 31, 2008 to December 31, 2009 is related primarily to continued deterioration in the Bank's overall commercial real estate loan portfolio. The number of loans on non-accrual status increased from 50 to 59 since December 31, 2008. The average non-accrual loan balance is \$350,000 and \$352,000 as of December 31, 2008 and December 31, 2009, respectively. 99.9% of the non-accrual loans are secured by real estate. \$3.1 million of the allowance for loan losses is specifically allocated to these relationships. This increase in non-performing loans is a direct result of the poor economic environment, as noted below, taking a toll on numerous borrowers' ability to pay as scheduled. At this time, management is unable to determine the ultimate impact on the Bank's A&D loan portfolio.

The Company's policy with respect to non-performing assets is as follows. Accrual of interest will be discontinued when management believes, after considering economic and business conditions and collection efforts that the borrower is such that the collection of interest is doubtful. A delinquent loan will generally be placed in non-accrual status when more past due unless the estimated net realizable value of collateral exceeds the principal balance and accrued interest. When a loan is placed in non-accrual status, all interest which has been accrued on the loan but remains unpaid is reversed and deducted from the reduction of reported interest income. No additional interest will be accrued on the loan balance until the collected interest becomes reasonably certain. When a problem loan is finally resolved, there may be a charge-off or a reversal of the principal balance of the loan to the full amount of the loan.

Potential Problem Loans. Potential problem loans are loans that have not yet become impaired loans, but about which management has become aware of information about possible credit problems. Causes of doubt include a borrower's financial condition, repayment terms. At December 31, 2009 and December 31, 2008, the Company had identified \$15.9 million and \$15.9 million of potential problem loans through its internal review procedure. The amount of this internal review process and management's assessment of the adequacy of the allowance for loan losses.

Non-Interest Income and Expense

Non-Interest Income. The largest component of Non-Interest Income was only on sale of investments which totalled \$1.2 million for the year ended December 31, 2009. There was no gain on sale of investments in 2008.

The following table sets forth the principal components of non-interest income for the years ended December 31, 2009 and 2008.

(Dollars in thousands)	2009	2008
Mortgage origination fees	470	470
Service charges on deposit accounts	322	322
Bank-owned life insurance	211	211
Gain on sale of investments	1,192	—
Other income	389	389
Total non-interest income	2,584	1,392

Non-Interest Expense. Salaries and employee benefits comprised the largest component of non-interest expense and \$4.8 million for the year ended December 31, 2009, compared to \$4.5 million for the year ended December 31, 2008. This increase is primarily due to the FDIC insurance premium which increased from \$1.1 million for the year ended December 31, 2008 to \$1.2 million for the year ended December 31, 2009. The increase in the FDIC assessment includes increased annual premiums by \$0.1 million. The increase in mortgage origination fees as a one-time FDIC insurance premium of \$0.1 million for the year ended December 31, 2009. The Company also had a write-down to Other Real Estate Owned and the assessed value of real estate of \$52.1 million for the year ended December 31, 2009.

The following table sets forth the primary components of non-interest expense for the years ended December 31, 2009 and 2008.

(Dollars in thousands)	2009		2008	
Salaries and benefits	\$	3,111	\$	4,828
Net occupancy		1,000		638
depreciation		1,000		718
Equipment maintenance and rental		1,000		194
Advertising		1,000		248
Professional fees		1,000		449
Office supplies		1,000		95
Telephone		1,000		148
Data processing		1,000		758
FDIC assessment		1,000		226
Write-down/loss on sale of other real estate owned		1,000		—
Write-down of repossessed collateral		1,000		—
Other		1,000		1,209
Total non-interest expense	\$	13,000	\$	9,511

Earning Assets

Loans. Loans are the largest category of earning assets and typically provide higher yields than the other types of earning assets. Loans also entail greater credit and liquidity risks than most of the Company's other investments and short-term interest-bearing assets. Loans also carry cash and cash equivalents, which management attempts to control and counterbalance. Loans averaged \$305.5 million and \$327.2 million in 2009 and 2008, respectively. Total loans were \$375.1 million and \$335.9 million at December 31, 2009 and 2008, respectively.

The following table sets forth the composition of the loan portfolio by category for the five years ended December 31, 2009 and highlights the Company's general approach to mortgage lending.

(Dollars in thousands)	2009		2008		2007		2006		2005	
	Amount	Percent Of Total	Amount	Percent Of Total	Amount	Percent Of Total	Amount	Percent Of Total	Amount	Percent Of Total
Real estate — construction	\$ 81,128	21.63%	\$ 126,777	40.44%	\$ 124,816	60.94%	\$ 69,021	30.89%	\$ 35,742	30.89%
Real estate — mortgage	267,269	68.37%	154,833	48.35%	146,599	49.31%	128,709	59.60%	68,965	59.60%
commercial and industrial	25,058	6.68%	23,703	7.35%	26,795	8.61%	17,779	7.85%	9,082	7.85%
consumer	1,153	0.31%	1,130	0.34%	1,011	0.31%	2,157	0.96%	1,815	1.66%
other, net, gross	299,958	77.03%	129,000	38.66%	118,793	100.00%	213,660	100.00%	115,704	100.00%
All other — cash and cash equivalents	4,125	1.08%	1,389	0.41%	1,389	0.41%	11,111	5.15%	(1,558)	
Net Loans	\$ 375,110		\$ 335,909		\$ 327,215		\$ 314,146		\$ 214,146	

The largest component of loans in the Company's loan portfolio is real estate mortgage loans. At December 31, 2009, mortgage loans, which consist of first and second mortgages on single or multi-family residential dwellings, first and second mortgages on commercial and industrial real estate and other loans secured by multi-family properties and farmland, totaled \$167.3 million and represented 44.61% and 49.25%, respectively, of the total loan portfolio. In the context of this mortgage loan is defined as any loan, other than a loan for construction purposes, secured by real estate, regardless of whether the loan is a first or second mortgage. It is common practice for financial institutions in the Company's market area to obtain a security interest in the collateral in addition to any other available collateral. This practice is taken to reinforce the likelihood of the collateral and tends to increase the magnitude of the real estate component. Real estate mortgages consist of \$169 million of first-mortgage loans and \$1.9 million of second-mortgage loans. At December 31, 2008, real estate mortgage loans totaled \$167.3 million, of which \$14.8 million, or 8.8%, were second mortgages. The remaining \$152.5 million, or 91.2%, were first mortgages. The purpose of the second mortgage is to provide a source of collateral for the purpose of the loan. The total amount of second mortgages at December 31, 2008 was \$1.9 million or 37.3% of the total amount of second mortgages.

The demand for residential and commercial real estate loans in the Upstate of South Carolina has been historically low in a historically low interest rate environment. Commercial real estate loans are generally viewed as having more risk than residential real estate loans. They are also typically larger than residential real estate loans and depend on the borrower's business or the property to service the debt. Cash flows may be affected significantly by general economic conditions (including rising interest rates), a downturn in the local economy, or a decline in occupancy rates in the local economy where the property is located. Because our loan portfolio contains a number of commercial real estate loans with relatively large balances, the deterioration of one or a few of these loans could cause a significant increase in our level of non-performing loans. An increase in non-performing loans could result in a loss of earnings from these loans, an increase in the related provision for loan losses and an increase in charge-off, which could have a material adverse effect on our financial condition and results of operations.

Real estate construction loans totaled \$81.1 million and \$129.8 million at December 31, 2009 and 2008, respectively. In the context of this discussion, a "real estate construction loan" is defined as any loan for construction purposes, secured by real estate. Real estate construction loans represent \$28.5 million or 56.23% of our impaired loans.

Commercial and industrial loans totaled \$77.0 million and \$33.2 million at December 31, 2009 and 2008, respectively, and 10.38%, respectively of the total portfolio. In the context of this discussion, a "commercial and industrial loan" is defined as any loan for a non-consumer purpose, not secured by real estate.

The Company's loan portfolio also includes consumer loans. At December 31, 2009 and 2008, consumer loans totaled \$11.7 million and \$3.0 million, respectively and represented 0.66% and 0.4%, respectively, of the total loan portfolio.

The Company's loan portfolio reflects the diversity of the upstate South Carolina market. The Company's offices are located in Spartanburg, Milledgeville, Greer, Anderson and Greenville, South Carolina. Management expects the market to continue to grow in the near future. The diversity of the economy creates a demand for all types of lending. The Company does not engage in foreign lending.

The repayment of loans in the loan portfolio as they mature is also a source of liquidity for the Company. Due to the downturn, all contractual maturities may not be paid in full. The contractual maturity of loans is as follows: The following table sets forth the Company's loans maturing within specified intervals at December 31, 2009 and 2008.

2009

(Dollars in thousands)	Over One Year Through Five Years			Total
	One Year or Less	Over One Year Through Five Years	Over Five Years	
Real estate — construction	\$ 62,205	\$ 18,762	\$ 1,128	\$ 81,128
Real estate — mortgage	42,712	97,120	22,164	167,296
Commercial and industrial	1,362	1,217	1,449	25,028
Consumer	—	991	—	1,652
	<u>\$ 22,124</u>	<u>\$ 117,114</u>	<u>\$ 22,941</u>	<u>\$ 275,104</u>
Loans maturing after one year with:				
Fixed interest rates				\$ 140,182
Floating interest rates				9,776
				<u>\$ 149,958</u>

due to the fact that residential real estate construction loans are generally viewed as having more risk than residential real estate loans. They are also typically larger than residential real estate loans and depend on the borrower's business or the property to service the debt. Cash flows may be affected significantly by general economic conditions (including rising interest rates), a downturn in the local economy, or a decline in occupancy rates in the local economy where the property is located. Because our loan portfolio contains a number of commercial real estate loans with relatively large balances, the deterioration of one or a few of these loans could cause a significant increase in our level of non-performing loans. An increase in non-performing loans could result in a loss of earnings from these loans, an increase in the related provision for loan losses and an increase in charge-off, which could have a material adverse effect on our financial condition and results of operations.

In the context of this discussion, a "real estate construction loan" is defined as any loan for construction purposes, secured by real estate.

Real estate construction loans represent 28.5 million or 56.23% of our impaired loans.

Commercial and industrial loans totaled 77.0 million and 33.2 million at December 31, 2009 and 2008, respectively, and 10.38%, respectively of the total portfolio.

The Company's loan portfolio reflects the diversity of the upstate South Carolina market. The Company's offices are located in Spartanburg, Milledgeville, Greer, Anderson and Greenville, South Carolina. Management expects the market to continue to grow in the near future. The diversity of the economy creates a demand for all types of lending. The Company does not engage in foreign lending.

The repayment of loans in the loan portfolio as they mature is also a source of liquidity for the Company. Due to the downturn, all contractual maturities may not be paid in full. The contractual maturity of loans is as follows: The following tables

Dollars in thousands)	Over One Year Through Five Years			
	One Year or Less	Over One Year Through Five Years	Over Five Years	Total
Real estate — construction	\$ 76,579	\$ 51,914	\$ 1,284	\$ 129,777
Real estate — mortgage	24,951	106,620	23,267	154,838
Commercial and industrial	17,384	13,863	2,056	33,303
Consumer	686	1,641	662	2,989
	<u>\$ 119,600</u>	<u>\$ 174,038</u>	<u>\$ 27,269</u>	<u>\$ 320,907</u>

Loans maturing after one year with:

Fixed interest rates	\$ 169,843
Floating interest rates	31,464
	<u>\$ 201,307</u>

The information presented in the above table is based on the contractual maturities of the individual loans, including loans which may be subject to renewal at their contractual maturity. Renewal of such loans is subject to review and credit approval as well as modification of terms upon their maturity. Consequently, management believes this treatment presents fairly the maturity and repricing structure of the loan portfolio shown in the above table.

Investment Securities and Other Investments. The investment securities portfolio, which averaged \$67.5 million and \$47.1 million in 2009 and 2008, respectively, is a component of the Company's total earning assets. At December 31, 2009 and 2008, the total investment securities portfolio was \$105.2 million and \$49.4 million, respectively. Investment securities were primarily marketable investments recorded at their fair value. Other investments consisted of FHLB stock recorded at cost.

The following table sets forth the amortized cost and fair value of the securities held by the Company for the three years ended December 31, 2009.

Dollars in thousands)	2009		2008		2007	
	Amortized Cost	Fair Value	Amortized Cost	Fair Value	Amortized Cost	Fair Value
U.S. government agencies	\$ —	\$ —	\$ 19,001	\$ 19,086	\$ 15,487	\$ 15,623
Mortgage-backed securities	104,672	103,538	27,768	28,416	9,014	9,121
Other securities	100	100	100	100	100	100
Other investments	1,599	1,599	1,805	1,805	447	447
Total investment securities portfolio	<u>\$ 106,371</u>	<u>\$ 105,237</u>	<u>\$ 48,674</u>	<u>\$ 49,407</u>	<u>\$ 25,048</u>	<u>\$ 25,291</u>

The following table sets forth securities maturing within specified intervals at December 31, 2009 and their weighted average yields.

Dollars in thousands)	One Year or Less	Weighted-Average Yield	Over One Year Through Five Years	Weighted-Average Yield	Over Five Years Through Ten Years	Weighted-Average Yield	Over Ten Years	Weighted-Average Yield	Total	Weighted-Average Yield
	U.S. government agencies	\$ —	—%	\$ —	—%	\$ —	—%	\$ —	—%	\$ —
Mortgage-backed securities	—	—%	—	—%	—	—%	104,672	3.10%	104,672	3.10%
Other securities	—	—%	—	—%	—	—%	100	—%	100	—%
Other investments	—	—%	—	—%	—	—%	1,599	—%	1,599	—%
	<u>\$ —</u>	<u>—%</u>	<u>\$ —</u>	<u>—%</u>	<u>\$ —</u>	<u>—%</u>	<u>\$ 106,371</u>	<u>3.05%</u>	<u>\$ 106,371</u>	<u>3.05%</u>

Short-Term Investments. Short-term investments, which consist primarily of federal funds sold, averaged \$16.7 million and \$7.9 million in 2009 and 2008, respectively with a weighted average yield of 0.26% and 3.04% in 2009 and 2008, respectively. These funds are an important source of the Company's liquidity. Federal funds are generally invested in an earning capacity on an overnight basis. At December 31, 2009 and 2008, federal funds were \$31.0 million and \$4.6 million at an annualized overnight rate of 0.14% and 0.50%, respectively. The maximum outstanding balance of federal funds sold at any month end during the years 2009 and 2008 was \$31.0 million and \$16.4 million, respectively.

Other Real Estate Owned and Repossessed Assets

As of December 31, 2009 the Company had other real estate owned totaling \$6.7 million compared to \$415,000 as of December 31, 2008. Other real estate owned consists of approximately \$2.2 million of residential properties, \$4.0 million of land and approximately \$481,000 of commercial real estate. Repossessed assets consist of approximately \$902,000 of equipment and \$40,000 of stock. Two properties were sold during the year ended December 31, 2009 resulting in a loss of \$143,000 and two repossessed assets were sold during the year ended December 31, 2009 with no resulting loss. Subsequent to repossession, based on new market information, \$2.1 million was charged to expense to write down the value of other real estate owned and repossessed assets.

Deposits

General. Average interest-bearing liabilities totaled \$352.0 million and \$325.8 million in 2009 and 2008, respectively. Average total deposits totaled \$334.1 million and \$307.7 million during 2009 and 2008, respectively. At December 31, 2009 and 2008 total deposits were \$376.6 million and \$296.6 million, respectively.

The following table sets forth the average deposits of the Company by category for the year ended December 31, 2009, 2008 and 2007.

(Dollars in thousands)	2009		2008		2007	
	Amount	Average Rate	Amount	Average Rate	Amount	Average Rate
Non-interest bearing demand	\$ 22,290	—%	\$ 23,739	—%	\$ 18,864	—%
Interest bearing demand	18,247	1.20%	15,300	2.12%	11,520	1.70%
Savings	60,101	2.55%	18,881	1.18%	19,107	3.39%
Time	233,472	2.27%	249,765	4.36%	228,748	5.32%
Total	<u>\$ 334,110</u>		<u>\$ 307,685</u>		<u>\$ 278,239</u>	

The following table sets forth the deposits of the Company by category as of December 31, 2009, 2008 and 2007.

(Dollars in thousands)	2009		2008		2007	
	Amount	% of Deposits	Amount	% of Deposits	Amount	% of Deposits
Non-interest bearing demand	\$ 21,829	5.80%	\$ 22,162	7.47%	\$ 24,464	7.46%
Interest bearing demand	18,588	4.94%	16,449	5.55%	13,721	4.19%
Savings	82,295	21.85%	14,461	4.87%	24,634	7.52%
Time deposits less than \$100	30,054	7.98%	32,111	10.82%	59,528	18.17%
Time deposits of \$100 or over	21,014	5.58%	25,162	8.49%	47,118	14.38%
Brokered deposits	202,783	53.85%	186,298	62.80%	158,199	48.28%
Total	<u>\$ 376,563</u>	<u>100.00%</u>	<u>\$ 296,643</u>	<u>100.00%</u>	<u>\$ 327,664</u>	<u>100.00%</u>

Core deposits, which exclude certificates of deposit of \$100,000 or more and brokered deposits, provide a relatively stable funding source for the Company's loan portfolio and other earning assets. The Company's core deposits were \$152.8 million and \$85.2 million at December 31, 2009 and 2008, respectively, or 40.6% and 28.7%, respectively of total deposits. Certificates of deposit of \$100,000 or more and brokered deposits are not considered core deposits because their retention can be expected to be heavily influenced by rates offered at renewal.

For the years ended December 31, 2009 and 2008, our non-core deposits included wholesale funding in the form of brokered CDs of \$202.8 million and \$186.3 million, respectively. We generally obtain out-of-market time deposits of \$100,000 or more through brokers with whom we maintain ongoing relationships. The guidelines governing our participation in brokered CD programs are part of our Asset Liability Management Program Policy, which is reviewed, revised and approved annually by the Asset Liability Committee. These guidelines limit brokered CDs to 65% of total deposits, dictate that our current interest rate risk profile determines the terms and that we only accept brokered CDs from approved correspondents. These guidelines allow us to take advantage of the attractive terms that wholesale funding can offer while mitigating the inherent related risk.

As of December 31, 2009, we had brokered deposits of \$202.8 million, representing 53.85% of our total deposits, of which \$79.7 million are scheduled to mature in the third quarter of 2010 and \$94.9 million are scheduled to mature in the fourth quarter of 2010. Because of the limitations on brokered deposits imposed by the MOU, the Consent Order, and our "undercapitalized" status, we must find other sources of liquidity to replace these deposits as they mature. Secondary sources of liquidity may include proceeds from FHLB advances and federal funds lines of credit from correspondent banks. However, FHLB has informed us that due to our financial condition we are not currently permitted to receive any more advances. As a result, we must limit our growth, raise additional capital, or sell assets, which could materially and adversely affect our financial condition and results of operations.

In addition, because the Bank is "undercapitalized," we cannot offer an effective yield in excess of 75 basis points on interest paid on deposits (including brokered deposits, if approval is granted for the Bank to accept them) of comparable size and maturity in either the Bank's normal market area or in the market area in which such deposits would otherwise be accepted. Thus, for deposits in the Bank's own normal market area, the Bank must offer rates that are not in excess of 75 basis points over the average local rates. For non-local deposits, the Bank must offer rates that are not in excess of 75 basis points over either (1) the Bank's own local rates or (2) the applicable non-local rates. In other words, the Bank must adhere to the prevailing rates in its own normal market area for all deposits (whether local or non-local) and also must adhere to the prevailing rates in the non-local area for any non-local deposits. Thus, the Bank will be unable to outbid non-local institutions for non-local deposits even if the non-local rates are lower than the rates in the Bank's own normal market area. Because of this interest rate cap, we may not be able to attract sufficient deposits to meet our liquidity needs. If this were to occur, the Bank may be placed into a federal conservatorship or receivership by the FDIC, with the FDIC appointed as conservator or receiver.

Deposits have been a primary source of funding. Management anticipates that deposits will continue to be the Company's primary source of funding in the future. The Company's loan-to-deposit ratio was 73.06% and 108.17% at December 31, 2009 and 2008, respectively. The maturity distribution of the Company's time deposits of \$100,000 or over at December 31, 2009 and 2008, is set forth in the following tables.

Maturities of Certificates of Deposit of \$100,000 or More (Including Brokered Deposits)

(Dollars in thousands)	Within Three Months	After Three Through Six Months	After Six Through Twelve Months	After Twelve Months	Total
December 31, 2009					
Brokered Deposits	\$ 6,800	\$ 21,269	\$ 174,714	\$ —	\$ 202,783
Certificates of deposit of \$100,000 or more	4,692	7,868	6,624	1,830	21,014
Total	<u>\$ 11,492</u>	<u>\$ 29,137</u>	<u>\$ 181,338</u>	<u>\$ 1,830</u>	<u>\$ 223,797</u>
December 31, 2008					
Brokered Deposits	\$ 186,298	\$ —	\$ —	\$ —	\$ 186,298
Certificates of deposit of \$100,000 or more	1,782	11,231	10,494	1,655	25,162
Total	<u>\$ 188,080</u>	<u>\$ 11,231</u>	<u>\$ 10,494</u>	<u>\$ 1,655</u>	<u>\$ 211,460</u>

Of the Company's time deposits of \$100,000 or over as of December 31, 2009 and 2008, 5.14% and 88.94% had scheduled maturities within three months, respectively. As of December 31, 2009 and 2008, 99.18% and 99.22%, respectively, of the Company's time deposits of \$100,000 or over had maturities within twelve months.

Other Borrowings

The following table outlines our various sources of borrowed funds during the years ended December 31, 2009, 2008 and 2007, the amounts outstanding at the end of each period and the weighted-average interest rates paid for each borrowing source.

(Dollars in thousands)	Ending Balance	Period-End Rate	Average Balance	Weighted-Average Rate for Year	Maximum Outstanding at any Month End
December 31, 2009					
Federal Home Loan Bank advances	\$ —	—%	\$ 5,384	1.34%	\$ 25,000
Federal funds purchased	—	—%	155	0.57%	3,144
Federal reserve discount window	—	—%	63	0.00%	—
Securities sold under agreement to repurchase	30,000	3.24%	30,000	3.25%	30,000
Bank of Tennessee note payable	—	—%	246	2.85%	1,570
Subordinated debt	4,325	11.50%	4,325	11.50%	4,325
December 31, 2008					
Federal Home Loan Bank advances	\$ 25,000	1.49%	\$ 9,645	2.33%	\$ 30,000
Federal funds purchased	—	—%	1,312	1.85%	9,491
Securities sold under agreement to repurchase	30,000	3.24%	28,525	2.46%	30,000
Bank of Tennessee note payable	1,570	3.25%	916	3.71%	1,570
Subordinated debt	4,325	11.50%	1,294	11.50%	4,325
December 31, 2007					
Securities sold under agreement to repurchase	\$ 15,000	2.58%	\$ 2,315	2.72%	\$ 15,000

Subordinated Debt. During the third quarter of 2008, we commenced a subordinated debt offering to enhance and strengthen the levels of capital and liquidity at the holding company such that we could improve the levels of regulatory capital at the Bank. We raised \$4,325 million in additional capital before we closed the offering on October 15, 2008. The subordinated notes were sold to a limited number of purchasers in a private offering, bear an interest rate of 11.5%, are callable after September 30, 2011, at a premium, and mature in 2018. The subordinated debt has been structured to fully count as Tier 2 regulatory capital on a consolidated basis.

Due to diminishing cash available at the holding company level, if we are unable to raise additional capital, we will have to discontinue paying interest on the subordinated debentures after the March 2010 payments due to lack of funds.

Federal Home Loan Bank Advances, Fed Funds Lines of Credit and Federal Reserve Discount Window. Our other borrowings have traditionally included proceeds from FHLB advances and federal funds lines of credit from correspondent banks. As of December 31, 2009, the FHLB has informed us that due to our financial condition we are not currently permitted to receive any more advances. At December 31, 2009, we had federal funds lines of credit with unrelated banks totaling \$5 million. These lines are available for general corporate purposes. These lines may be terminated at any time based on our financial condition. We also have credit availability through the Federal Reserve Discount Window. As of December 31, 2009, \$5.9 million was available, based on qualifying collateral. The Federal Reserve Discount Window borrowing capacity has been curtailed to only overnight terms, contingent upon credit approval for each transaction. Availability of the Federal Reserve Discount Window may be terminated at any time by the Federal Reserve, and we can make no assurances that this funding source will continue to be available to us.

Capital

The FRB and bank regulatory agencies require bank holding companies and financial institutions to maintain capital at adequate levels based on a percentage of assets and off-balance sheet exposures, adjusted for risk weights ranging from 0% to 100%.

The FRB guidelines contain an exemption from the capital requirements for "small bank holding companies" which in 2006 were amended to cover most bank holding companies with less than \$500 million in total assets that do not have a material amount of debt or equity securities outstanding registered with the SEC. Although our class of common stock is registered under Section 12 of the Securities Exchange Act, we believe that because our stock is not listed on any exchange or otherwise actively traded, the FRB will interpret its new guidelines to mean that we qualify as a small bank holding company. Nevertheless, our Bank remains subject to these capital requirements. Failure to meet minimum capital requirements can initiate certain mandatory and possibly additional discretionary actions by regulators that, if undertaken, could have a direct material effect on the Bank's financial statements. Under capital adequacy guidelines and the regulatory framework for prompt corrective action, the Bank must meet specific capital guidelines that involve quantitative measures of the Bank's assets, liabilities, and certain off-balance sheet items as calculated under regulatory accounting practices. The Bank's capital amounts and classifications are also subject to qualitative judgments by the regulators about components, risk weightings, and other factors.

Under the capital adequacy guidelines, regulatory capital is classified into two tiers. These guidelines require an institution to maintain a certain level of Tier 1 and Tier 2 capital to risk-weighted assets. Tier 1 capital consists of common shareholders' equity, excluding the unrealized gain or loss on securities available for sale, minus certain intangible assets. In determining the amount of risk-weighted assets, all assets, including certain off-balance sheet assets, are multiplied by a risk-weight factor of 0% to 100% based on the risks believed to be inherent in the type of asset. Tier 2 capital consists of Tier 1 capital plus the general reserve for loan losses, subject to certain limitations. We are also required to maintain capital at a minimum level based on total average assets, which is known as the Tier 1 leverage ratio.

At the Bank level, we are subject to various regulatory capital requirements administered by the federal banking agencies. Under the regulations adopted by the federal regulatory authorities, a bank will be categorized as:

- Well capitalized if the institution has a total risk-based capital ratio of 10.0% or greater, a Tier 1 risk-based capital ratio of 6.0% or greater, a leverage ratio of 5.0% or greater, and is not subject to any order or written directive by any such regulatory authority to meet and maintain a specific capital level for any capital measure.
- Adequately capitalized if the institution has a total risk-based capital ratio of 8.0% or greater, a Tier 1 risk-based capital ratio of 4.0% or greater, a leverage ratio of 4.0% or greater, and is not categorized as well capitalized.
- Undercapitalized if the institution has a total risk-based capital ratio that is less than 8.0%, a Tier 1 risk-based capital ratio of less than 4.0%, or a leverage ratio of less than 4.0%.
- Significantly undercapitalized if the institution has a total risk-based capital ratio of less than 6.0%, a Tier 1 risk-based capital ratio of less than 3.0%, or a leverage ratio of less than 3.0%.
- Critically undercapitalized if the institution's tangible equity is equal to or less than 2.0% of average quarterly tangible assets.

In addition, an institution may be downgraded to, or deemed to be in, a capital category that is lower than indicated by its capital ratios if it is determined to be in an unsafe or unsound condition or if it receives an unsatisfactory examination rating with respect to certain matters. A bank's capital category is determined solely for the purpose of applying prompt corrective action regulations, and the capital category may not constitute an accurate representation of a bank's overall financial condition or prospects for other purposes.

If a bank is not well capitalized, it cannot accept brokered deposits without prior FDIC approval and, if approval is granted, cannot offer an effective yield in excess of 75 basis points on interest paid on deposits of comparable size and maturity in such institution's normal market area for deposits accepted from within its normal market area, or national rate paid on deposits of comparable size and maturity for deposits accepted outside the bank's normal market area. Moreover, the FDIA generally prohibits a depository institution from making any capital distributions (including payment of a dividend) or paying any management fee to its parent holding company if the depository institution would thereafter be categorized as undercapitalized. Undercapitalized institutions are subject to growth limitations (an undercapitalized institution may not acquire another institution, establish additional branch offices or engage in any new line of business unless determined by the appropriate federal banking agency to be consistent with an accepted capital restoration plan, or unless the FDIC determines that the proposed action will further the purpose of prompt corrective action) and are required to submit a capital restoration plan. The agencies may not accept a capital restoration plan without determining, among other things, that the plan is based on realistic assumptions and is likely to succeed in restoring the depository institution's capital. In addition, for a capital restoration plan to be acceptable, the depository institution's parent holding company must guarantee that the institution will comply with the capital restoration plan. The aggregate liability of the parent holding company is limited to the lesser of an amount equal to 5.0% of the depository institution's total assets at the time it became categorized as undercapitalized or the amount that is necessary (or would have been necessary) to bring the institution into compliance with all capital standards.

applicable with respect to such institution as of the time it fails to comply with the plan. If a depository institution fails to submit an acceptable plan, it is categorized as significantly undercapitalized.

Significantly undercapitalized categorized depository institutions may be subject to a number of requirements and restrictions, including orders to sell sufficient voting stock to become categorized as adequately capitalized, requirements to reduce total assets, and cessation of receipt of deposits from correspondent banks. The appropriate federal banking agency may take any action authorized for a significantly undercapitalized institution if an undercapitalized institution fails to submit an acceptable capital restoration plan or fails in any material respect to implement a plan accepted by the agency. A critically undercapitalized institution is subject to having a receiver or conservator appointed to manage its affairs and for loss of its charter to conduct banking activities.

An insured depository institution may not pay a management fee to a bank holding company controlling that institution or any other person having control of the institution if, after making the payment, the institution would be undercapitalized. In addition, an institution cannot make a capital distribution, such as a dividend or other distribution, that is in substance a distribution of capital to the owners of the institution if following such a distribution the institution would be undercapitalized. Thus, if payment of such a management fee or the making of such would cause a bank to become undercapitalized, it could not pay a management fee or dividend to the bank holding company.

As of December 31, 2009, the Bank was categorized "undercapitalized" under the regulatory framework.

Analysis of Regulatory Capital and Capital Ratios

(Dollars in thousands)	2009	2008
Tier 1 capital	\$ 13,643	\$ 30,836
Tier 2 capital	3,558	4,369
Total qualifying capital	<u>\$ 17,201</u>	<u>\$ 35,205</u>
Risk-adjusted total assets (including off-balance sheet exposures)	<u>\$ 275,206</u>	<u>\$ 345,829</u>
Total risk-based capital ratio	6.25%	10.18%
Tier 1 risk-based capital ratio	4.96%	8.92%
Tier 1 leverage ratio	3.12%	7.98%

Our loss for 2009 has adversely impacted our capital. As a result, we have been pursuing a plan to increase our capital ratios in order to strengthen our balance sheet and satisfy the commitments required under the Consent Order that we entered into with the FDIC and the South Carolina Board of Financial Institutions on February 23, 2010. In addition, the Consent Order requires us to achieve and maintain, by May 24, 2010, Total Risk Based capital at least equal to 10% of risk-weighted assets and Tier 1 capital at least equal to 8% of total assets.

Off-Balance Sheet Risk

Through its operations, the Bank has made contractual commitments to extend credit in the ordinary course of its business activities. These commitments are legally binding agreements to lend money to the Bank's customers at predetermined interest rates for a specified period of time. At December 31, 2009 and 2008, the Bank had issued commitments, including standby letters of credit, to extend credit of \$16.0 million and \$39.7 million, respectively through various types of commercial lending arrangements.

The following tables set forth the length of time until maturity for unused commitments to extend credit at December 31, 2009 and 2008.

<i>(Dollars in thousands)</i>	Within One Month	After One Through Three Months	After Three Through Twelve Months	Within One Year	Greater Than One Year	Total
December 31, 2009						
Unused commitments to extend credit	\$ 2,397	\$ 1,117	\$ 4,385	\$ 7,899	\$ 6,552	\$ 14,451
Standby letters of credit	74	321	680	1,075	450	1,525
	<u>\$ 2,471</u>	<u>\$ 1,438</u>	<u>\$ 5,065</u>	<u>\$ 8,974</u>	<u>\$ 7,002</u>	<u>\$ 15,976</u>
December 31, 2008						
Unused commitments to extend credit	\$ 2,941	\$ 1,889	\$ 11,989	\$ 16,819	\$ 19,441	\$ 36,260
Standby letters of credit	717	80	2,617	3,414	74	3,488
	<u>\$ 3,658</u>	<u>\$ 1,969</u>	<u>\$ 14,606</u>	<u>\$ 20,233</u>	<u>\$ 19,515</u>	<u>\$ 39,748</u>

Approximately \$11.4 million and \$30.9 million of these commitments to extend credit had variable rates as of December 31, 2009 and 2008, respectively.

The Bank evaluates each customer's creditworthiness on a case-by-case basis. The amount of collateral obtained, if deemed necessary by the Bank upon extension of credit, is based on its credit evaluation of the borrower. Collateral varies but may include accounts receivable, inventory, property, plant and equipment, commercial and residential real estate.

Critical Accounting Policies

We have adopted various accounting policies that govern the application of accounting principles generally accepted in the United States of America and with general practices within the banking industry in the preparation of our financial statements. Our significant accounting policies are described in Note 1 to the financial statements in Item 1.

Certain accounting policies involve significant judgments and assumptions by us that have a material impact on the carrying value of certain assets and liabilities. We consider these accounting policies to be critical accounting policies. The judgments and assumptions we use are based on historical experience and other factors, which we believe to be reasonable under the circumstances. Because of the nature of the judgments and assumptions we make, actual results could differ from these judgments and estimates that could have a material impact on the carrying values of our assets and liabilities and our results of operations.

We believe the allowance for loan losses is the critical accounting policy that requires the most significant judgments and estimates used in preparation of our consolidated financial statements. Some of the more critical judgments supporting the amount of our allowance for loan losses include judgments about the credit worthiness of borrowers, the estimated value of the underlying collateral, the assumptions about cash flows, the determination of loss factors for estimating credit losses, the impact of current events, and conditions, and other factors impacting the level of probable inherent losses. Under different conditions or using different assumptions, the actual amount of credit losses incurred by us may be different from management's estimates provided in our consolidated financial statements. Refer to the portion of this discussion that addresses our allowance for loan losses for a more complete discussion of our processes and methodology for determining our allowance for loan losses.

Allowance for Loan Losses

The allowance for loan losses represents an amount that we believe will be adequate to absorb probable losses on existing loans that may become uncollectible. Assessing the adequacy of the allowance for loan losses is a process that requires considerable judgment. Our judgment in determining the adequacy of the allowance is based on evaluations of the collectability of loans, including consideration of factors such as the balance of impaired loans; the quality, mix and size of our overall loan portfolio; economic conditions that may affect the borrower's ability to repay; the amount and quality of collateral securing the loans; our historical loan loss experience; and a review of specific problem loans. We adjust the amount of the allowance periodically based on changing circumstances as a component of the provision for loan losses. We charge recognized losses against the allowance and add subsequent recoveries back to the allowance.

We calculate the allowance for loan losses for specific types of loans and evaluate the adequacy on an overall portfolio basis utilizing our credit grading system which we apply to each loan. We combine our estimates of the reserves needed for each

component of the portfolio, including loans analyzed on a pool basis and loans analyzed individually. The allowance is divided into two portions: (1) an amount for specific allocations on significant individual credits and (2) a general reserve amount.

Specific Reserve

We analyze individual loans within the portfolio and make allocations to the allowance based on each individual loan's specific factors and other circumstances that affect the collectability of the credit. Significant individual credits classified as doubtful or substandard/special mention within our credit grading system require both individual analysis and specific allocation.

Loans in the substandard category are characterized by deterioration in quality exhibited by any number of well-defined weaknesses requiring corrective action such as declining or negative earnings trends and declining or inadequate liquidity. Loans in the doubtful category exhibit the same weaknesses found in the substandard loan; however, the weaknesses are more pronounced. These loans, however, are not yet rated as loss because certain events may occur which could salvage the debt such as injection of capital, alternative financing, or liquidation of assets.

In these situations where a loan is determined to be impaired (primarily because it is probable that all principal and interest due according to the terms of the loan agreement will not be collected as scheduled), the loan is excluded from the general reserve calculations described below and is assigned a specific reserve. We calculate specific reserves on those impaired loans exceeding \$250,000. These reserves are based on a thorough analysis of the most probable source of repayment which is usually the liquidation of the underlying collateral, but may also include discounted future cash flows or, in rare cases, the market value of the loan itself.

Generally, for larger collateral dependent loans, current market appraisals are ordered to estimate the current fair value of the collateral. However, in situations where a current market appraisal is not available, management uses the best available information (including recent appraisals for similar properties, communications with qualified real estate professionals, information contained in reputable trade publications and other observable market data) to estimate the current fair value. The estimated costs to sell the subject property are then deducted from the estimated fair value to arrive at the "net realizable value" of the loan and to determine the specific reserve on each impaired loan reviewed. The credit risk management group periodically reviews the fair value assigned to each impaired loan and adjusts the specific reserve accordingly.

General Reserve

We calculate our general reserve based on a percentage allocation for each of the categories of the following unclassified loan types such as: real estate, commercial, consumer, A&D/construction and mortgage. We apply our historical trend loss factors to each category and adjust these percentages for qualitative or environmental factors, as discussed below. The general estimate is then added to the specific allocations made to determine the amount of the total allowance for loan losses.

We also maintain our general reserve in accordance with December 2006 regulatory interagency guidance in our assessment of the loan loss allowance. This general reserve considers qualitative or environmental factors that are likely to cause estimated credit losses including, but not limited to: changes in delinquent loan trends, trends in risk grades and net chargeoffs, concentrations of credit, trends in the nature and volume of the loan portfolio, general and local economic trends, collateral valuations, the experience and depth of lending management and staff, lending policies and procedures, the quality of loan review systems, and other external factors.

The current economic environment has adversely affected our general reserve requirement. Historical data, environmental factors and loan trends have all deteriorated over the past year. This has resulted in a larger calculated general reserve requirement than compared to a year ago.

Other Real Estate Owned

We obtain current appraisals upon possession of all properties to be held as other real estate owned and adjust property values as appropriate. Updated appraisals are obtained periodically and further adjustments are also made as appropriate based on general market conditions and other related factors.

Liquidity Management

Liquidity is the ability to meet current and future obligations through liquidation or maturity of existing assets or the acquisition of liabilities. We manage both assets and liabilities to achieve appropriate levels of liquidity. Cash, federal funds and investments available for sale are our primary sources of asset liquidity. These funds provide a cushion against short-term fluctuations in cash flow from both deposits and loans. Historically, individual and commercial deposits have been our primary source of funds for credit activities. These include brokered deposits, which comprise 54% of our deposit base as of December 31, 2009. These have proven to be a reliable source of funds. However, pursuant to the MOU, the Consent Order, and our current financial condition, our ability to access brokered deposits through the wholesale funding market is restricted. Specifically, the Consent Order will restrict the Bank's ability to accept, renew, or rollover brokered deposits. Management believes that this will not have any liquidity impact in the first or second quarter of 2010 due to the extended maturities of the brokered deposits, but would cause funding issues in the third and fourth quarters of 2010. With access to the brokered deposit market unavailable, the Bank must replace those funds with local deposits. Deposit balances, net of brokered deposits, have increased \$63.4 million from December 31, 2008 to December 31, 2009. This was due to intentional restructuring to replace brokered deposits with local deposits. We anticipate that our funding cost and funding mix will now remain stable until the maturity of the brokered deposits in the third quarter of 2010.

In addition to our on balance sheet sources of funds, we also rely on off-balance sheet lines of credit. At December 31, 2009, we had lines of credit with unrelated banks totaling \$5 million. These lines are available for general corporate purposes. These lines may be terminated at any time based on our financial condition. We also have credit availability through the Federal Reserve Discount Window. As of December 31, 2009, \$5.9 million was available, based on qualifying collateral. The Federal Reserve Discount Window borrowing capacity has been curtailed to only overnight terms, contingent upon credit approval for each transaction. Availability of the Federal Reserve Discount Window may be terminated at any time by the Federal Reserve, and we can make no assurances that this funding source will continue to be available to us. The FHLB has informed us that due to our financial condition we are not permitted to receive any more advances.

Following the execution of the Consent Order with the FDIC and the South Carolina Board of Financial Institutions, we will be required to revise our comprehensive liquidity risk management program. This program will assess our current and projected funding needs to ensure that sufficient funds or access to funds exist to meet those needs. The program must also include effective methods to achieve and maintain sufficient liquidity and to measure and monitor liquidity risk including the preparation and submission of liquidity reports on a regular basis to the FDIC. The program will also contain a contingency funding plan that forecasts funding needs and funding sources under different stress scenarios. This plan will detail how the Bank will comply with the restrictions in the Consent Order, including the restriction against brokered deposits, as well as require reports detailing all funding sources and obligations under best case and worse case scenarios.

Our level of liquidity is measured by the cash, cash equivalents and securities available for sale to total assets ratio, which was at 23.8% at December 31, 2009. We anticipate that this will increase with the combination of deposit growth and shrinkage of assets in 2010.

We believe our liquidity sources are adequate to meet our first and second quarter needs. However, based on current sources of liquidity, our sources may be insufficient in the third quarter of 2010. See section "Maturities of Certificates of Deposit of \$100,000 or More (Including Brokered Deposits)" above. If this were to occur, the Bank may be placed into a federal conservatorship or receivership by the FDIC, with the FDIC appointed as conservator or receiver.

Impact of Inflation

Unlike most industrial companies, the assets and liabilities of financial institutions such as the Bank are primarily monetary in nature. Therefore, interest rates have a more significant effect on the Bank's performance than do the effects of changes in the general rate of inflation and change in prices. In addition, interest rates do not necessarily move in the same direction or in the same magnitude as the prices of goods and services. As discussed previously, management seeks to manage the relationships between interest sensitive assets and liabilities in order to protect against wide interest rate fluctuations, including those resulting from inflation.

Recently Issued Accounting Standards

Accounting standards and pronouncements of a recent nature are discussed in Notes to Consolidated Financial Statements, Note 1 - Summary of Significant Accounting Policies. Other accounting standards that have been issued or proposed by authoritative standards-setting bodies that do not require adoption until a future date are not expected to have a material impact on the consolidated financial statements upon adoption.



REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Shareholders and Board of Directors
CommunitySouth Financial Corporation and Subsidiary
Easley, South Carolina

We have audited the accompanying consolidated balance sheets of CommunitySouth Financial Corporation and Subsidiary (the "Company") as of December 31, 2009 and 2008, and the related consolidated statements of operations, changes in shareholders' equity and comprehensive income, and cash flows for the years then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of CommunitySouth Financial Corporation and Subsidiary as of December 31, 2009 and 2008 and the results of their operations and their cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 2 to the consolidated financial statements, the Company's subsidiary bank (the "Bank") has significant capital and liquidity issues. The Company has incurred approximately \$19 million and \$3 million in losses during 2009 and 2008, respectively, and the Bank is "undercapitalized" under regulatory capital guidelines. In addition to being "undercapitalized", effective February 23, 2010, the Bank became subject to a regulatory Consent Order with the Federal Deposit Insurance Corporation ("FDIC") and the South Carolina Board of Financial Institutions. The uncertainty of the Company's ability to obtain sufficient capital as well as the uncertainty of the Bank's liquidity raises substantial doubt about the Company's ability to continue as a going concern. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty. Management's plans in regard to these matters are described in Note 2.

We were not engaged to examine management's assessment of the effectiveness of the Company's internal control over financial reporting as of December 31, 2009 included in the accompanying Management's Report on Internal Controls Over Financial Reporting and, accordingly, we do not express an opinion thereon.

A handwritten signature in cursive script that reads "Elliott Davis, LLC".

Greenville, South Carolina
February 26, 2010

COMMUNITYSOUTH FINANCIAL CORPORATION
CONSOLIDATED BALANCE SHEETS
(dollars in thousands)

	December 31,	
	2009	2008
Assets		
Cash and cash equivalents		
Cash and due from bank	\$ 6,876	\$ 5,251
Federal funds sold	31,043	4,625
Total cash and cash equivalents	37,919	9,876
Investment securities, available for sale	103,638	47,602
Other investments, at cost	1,599	1,805
Loans, net of allowance for loan losses of \$12,963 and \$8,088 in 2009 and 2008, respectively	262,141	312,819
Accrued interest receivable	1,440	1,628
Property and equipment, net	3,867	4,618
Bank-owned life insurance	—	5,437
Other real estate owned	6,703	415
Repossessed collateral	942	—
Other assets	3,285	3,616
	\$ 421,534	\$ 387,816
Liabilities and Shareholders' Equity		
Liabilities		
Deposits		
Non-interest bearing	\$ 21,829	\$ 22,162
Interest bearing	354,734	274,681
Total deposits	376,563	296,843
Repurchase agreements	30,000	30,000
Federal Home Loan Bank advances	—	25,000
Note payable	—	1,570
Subordinated debt	4,325	4,325
Accrued expenses	665	193
Accrued interest payable	1,307	1,406
Other liabilities	3	151
	412,863	359,288
Commitments and contingencies (Note 14)		
Shareholders' Equity		
Preferred stock, par value \$.01 per share 10,000,000 shares authorized, no shares issued	—	—
Common stock, par value \$.01 per share 35,000,000 shares authorized at December 31, 2009, and 10,000,000 shares authorized at December 31, 2008; 4,698,697 issued and outstanding at December 31, 2009 and 2008	47	47
Additional paid-in capital	29,824	29,760
Accumulated other comprehensive income (loss)	(1,134)	491
Retained deficit	(20,066)	(1,770)
	8,671	28,528
Total shareholders' equity	8,671	28,528
Total liabilities and shareholders' equity	\$ 421,534	\$ 387,816

The accompanying notes are an integral part of the consolidated financial statements.

COMMUNITYSOUTH FINANCIAL CORPORATION
CONSOLIDATED STATEMENTS OF OPERATIONS
(dollars in thousands, except per share data)

	For the years ended December 31,	
	2009	2008
Interest income		
Interest and fees on loans	\$ 16,959	\$ 20,163
Interest and dividends on investments	2,269	2,548
Total interest income	<u>19,228</u>	<u>22,711</u>
Interest expense	8,599	12,580
Net interest income	<u>10,629</u>	<u>10,131</u>
Provision for loan losses	16,990	7,168
Net interest income (loss) after provision for loan losses	<u>(6,361)</u>	<u>2,963</u>
Non-interest income		
Mortgage origination fees	709	470
Gain on sale of investments	1,162	—
Other	852	922
Total non-interest income	<u>2,723</u>	<u>1,392</u>
Non-interest expense		
Salaries and benefits	5,235	4,828
Occupancy	682	638
Depreciation	735	718
Equipment maintenance and rental	210	194
Advertising	227	248
Professional fees	351	449
Office supplies	82	95
Telephone	146	148
Data processing	921	758
FDIC Assessment	1,136	226
Writedown/loss on sale of other real estate owned	2,044	—
Writedown of repossessed collateral	174	—
Other	1,727	1,209
Total non-interest expense	<u>13,670</u>	<u>9,511</u>
Loss before income taxes	(17,308)	(5,156)
Income tax expense (benefit)	988	(1,806)
Net loss	<u>\$ (18,296)</u>	<u>\$ (3,350)</u>
Loss per share		
Basic	\$ (3.89)	\$ (0.71)
Diluted	\$ (3.89)	\$ (0.71)
Weighted average basic shares outstanding	<u>4,698,697</u>	<u>4,698,697</u>
Weighted average diluted shares outstanding	<u>4,698,697</u>	<u>4,698,697</u>

The accompanying notes are an integral part of the consolidated financial statements.

COMMUNITYSOUTH FINANCIAL CORPORATION
CONSOLIDATED STATEMENTS OF CHANGES IN
SHAREHOLDERS' EQUITY AND COMPREHENSIVE INCOME
For the years ended December 31, 2009 and December 31, 2008
(dollars in thousands)

	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Income (Loss)	Retained Earnings / (Deficit)	Total Shareholders' Equity	Total Comprehensive Income (Loss)
	Shares	Amount					
Balance at December 31, 2007	4,698,697	\$ 47	\$ 29,691	\$ 152	\$ 1,580	\$ 31,470	
Net loss	—	—	—	—	(3,350)	(3,350)	\$ (3,350)
Other comprehensive income (loss):							
Unrealized gains (losses) on securities, net of income taxes of \$149,000	—	—	—	339	—	339	339
Total comprehensive loss							<u>\$ (3,011)</u>
Stock based compensation	—	—	69	—	—	69	
Balance at December 31, 2008	4,698,697	\$ 47	\$ 29,760	\$ 491	\$ (1,770)	\$ 28,528	
Net loss	—	—	—	—	(18,296)	(18,296)	\$ (18,296)
Other comprehensive income (loss):							
Unrealized gains (losses) on securities, net of income taxes of \$0	—	—	—	(858)	—	(858)	(858)
Reclassification adjustment for gains included in net loss, net of income taxes of \$395	—	—	—	(767)	—	(767)	(767)
Total comprehensive loss							<u>\$ (19,921)</u>
Stock based compensation	—	—	64	—	—	64	
Balance at December 31, 2009	4,698,697	\$ 47	\$ 29,824	\$ (1,134)	\$ (20,066)	\$ 8,671	

The accompanying notes are an integral part of the consolidated financial statements.

COMMUNITYSOUTH FINANCIAL CORPORATION
CONSOLIDATED STATEMENTS OF CASH FLOWS
(dollars in thousands)

	For the years ended December 31,	
	2009	2008
Operating activities		
Net loss	\$ (18,296)	\$ (3,350)
Adjustments to reconcile net loss to net cash provided by operating activities:		
Provision for loan losses	16,990	7,168
Stock based compensation	64	69
Depreciation	735	718
Writedown of other real estate owned	1,901	—
Loss on sale of other real estate owned	143	—
Writedown of repossessed collateral	174	—
Loss on disposal of equipment	1	—
Appreciation of bank-owned life insurance	(51)	(211)
Deferred income tax expense (benefit)	90	(2,273)
Decrease in accrued interest receivable	188	464
Decrease in accrued interest payable	(99)	(1,833)
Increase (decrease) in accrued expenses	472	(235)
Decrease (increase) in other assets	483	(598)
Increase (decrease) in other liabilities	(148)	84
Net cash provided by operating activities	2,647	3
Investing activities		
Net decrease (increase) in loans outstanding	22,623	(21,267)
Purchase of investments and FHLB stock	(171,608)	(23,625)
Sale/call/maturity of investments and FHLB stock	113,911	—
Disposal (purchase) of property and equipment	15	(262)
Sale of bank-owned life insurance	5,488	—
Sale of other real estate owned	1,295	—
Sale of repossessed collateral	322	—
Net cash used in investing activities	(27,954)	(45,154)
Financing activities		
Net increase (decrease) in deposit accounts	79,920	(31,020)
Increase in repurchase agreements	—	15,000
Proceeds from and (repayment) of Federal Home Loan Bank advances	(25,000)	25,000
Subordinated debt issuance	—	4,325
Proceeds from and (repayment) of Bank of Tennessee note payable	(1,570)	1,570
Net cash provided by financing activities	53,350	14,875
Net increase (decrease) in cash and cash equivalents	28,043	(30,276)
CASH AND CASH EQUIVALENTS, BEGINNING OF YEAR	9,876	40,152
CASH AND CASH EQUIVALENTS, END OF YEAR	\$ 37,919	\$ 9,876
SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION		
Cash paid for:		
Interest	\$ 8,698	\$ 14,412
Income taxes	\$ 358	\$ 620
SCHEDULE OF NON-CASH TRANSACTIONS:		
Unrealized gain (loss) on investment securities, net of income taxes	\$ (1,625)	\$ 339
Loans charged-off	\$ 12,140	\$ 3,293

The accompanying notes are an integral part of the consolidated financial statements.

NOTE 1 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Business Activity and Organization - CommunitySouth Financial Corporation (the "Company") is a South Carolina corporation organized for the purpose of owning and controlling all of the capital stock of CommunitySouth Bank and Trust (the "Bank"). The Bank is a state chartered bank organized under the laws of South Carolina. From inception on March 20, 2004 through January 18, 2005, the Company engaged in organizational and pre-opening activities necessary to obtain regulatory approvals and to prepare its subsidiary, the Bank, to commence business as a financial institution. The Company received approval from the Federal Deposit Insurance Corporation ("FDIC"), the Federal Reserve Board ("FRB") and the State Board of Financial Institutions in January 2005.

The Bank began operations on January 18, 2005. The Bank primarily is engaged in the business of accepting deposits insured by the FDIC, and providing commercial, consumer and mortgage loans to the general public.

The Company sold 4,681,069 shares of common stock at \$6.40 per share in an initial public offering that was completed on February 15, 2005 (as adjusted for all stock splits). The offering raised \$29,430,810, net of offering costs. The directors and officers of the Company purchased 659,531 shares at \$6.40 per share for a total of \$4,221,000.

Basis of Presentation - The accounting and reporting policies conform to accounting principles generally accepted in the United States of America and to general practices in the banking industry. The Company uses the accrual basis of accounting.

Principles of Consolidation - The consolidated financial statements include the accounts of CommunitySouth Financial Corporation, the parent company, CommunitySouth Bank and Trust, its wholly owned subsidiary, and All Seasons Properties, I.I.C, a subsidiary of the Bank, was formed in 2009 for the purpose of holding and marketing repossessed assets. All significant intercompany items have been eliminated in the consolidated financial statements.

Management's Estimates - The preparation of consolidated financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of income and expenses during the reporting period. Actual results could differ from those estimates.

Disclosure Regarding Segments - The Company reports as one operating segment, as management reviews the results of operations of the Company as a single enterprise.

Cash and Cash Equivalents - For purposes of reporting cash flows, cash and cash equivalents include cash on hand, amounts due from banks, short-term interest bearing deposits and federal funds sold. Cash and cash equivalents have an original maturity of three months or less.

Concentrations of Credit Risk - Financial instruments, which potentially subject the Company to concentrations of credit risk, consist principally of loans receivable, investment securities, federal funds sold and amounts due from banks.

The Company makes loans to individuals and small businesses for various personal and commercial purposes primarily in the upstate region of South Carolina. The Company's loan portfolio is not concentrated in loans to any single borrower or to a relatively small number of borrowers. The Bank does have a concentration of loans classified as commercial real estate. These loans are especially susceptible to being adversely affected by the current economic downturn. The current downturn in the real estate market has resulted in an increase in loan delinquencies, defaults and foreclosures, and we believe these trends are likely to continue. In some cases, this downturn has resulted in a significant impairment to the value of our collateral and our ability to sell the collateral upon foreclosure, and there is a risk that this trend will continue. The commercial real estate collateral in each case provides an alternate source of repayment in the event of default by the borrower and may deteriorate in value during the time the credit is extended. If real estate values continue to decline, it is also more likely that we would be required to increase our allowance for loan losses.

In addition to monitoring potential concentrations of loans to particular borrowers or groups of borrowers, industries and geographic regions, management monitors exposure to credit risk that could arise from potential concentrations of leading products and practices such as loans that subject borrowers to substantial payment increases (e.g. principal deferral periods, loans with initial interest-only periods, etc), and loans with high loan-to-value ratios. Additionally, there are industry practices that could subject the Company to increased credit risk should economic conditions change over the course of a loan's life. For example, the Company makes variable rate loans and fixed rate principal-amortizing loans with maturities prior to the loan being fully paid (i.e. balloon payment loans). These loans are underwritten and monitored to manage the associated risks. Management has determined that there is no concentration of credit risk associated with its lending policies or practices.

The Company's investment portfolio consists of both marketable and non-marketable equity securities. Management believes credit risk associated with the equity securities is not significant. The Company places its deposits and correspondent accounts with and sells its federal funds to high quality institutions. Management believes credit risk associated with correspondent accounts is not significant.

Investment Securities — The Company classifies investments in equity and debt securities three categories:

1. *Available for sale securities:* These are securities that are not classified as either held to maturity or as trading securities. These securities are reported at fair market value. Unrealized gains and losses are reported, net of income taxes, as separate components of shareholders' equity (accumulated other comprehensive income).
2. *Held to maturity securities:* These are investment securities that the Company has the ability and intent to hold until maturity. These securities are stated at cost, adjusted for amortization of premiums and the accretion of discounts.
3. *Trading securities:* These are securities that are bought and held principally for the purpose of selling in the near future. Trading securities are reported at fair market value, and related unrealized gains and losses are recognized in the income statement. The Company has no trading securities.

Gains or losses on dispositions of investment securities are based on the differences between the net proceeds and the adjusted carrying amount of the securities sold, using the specific identification method. Premiums and discounts are amortized or accrued into interest income by a method that approximates a level yield.

Other Investments — CommunitySouth Bank and Trust, as a member institution, is required to own stock investments in the FHLB. Investment in the FHLB is a condition of borrowing from the FHLB, and the stock is pledged to collateralize such borrowings. No ready market exists for the stock and it has no quoted market value. However, redemption of these stocks has historically been at par value. At December 31, 2009 and 2008, the Company's investment in FHLB stock was \$1,599,300 and \$1,805,200, respectively. The dividend received on this stock is included in interest and dividends on investments.

Loans Receivable - Loans are stated at their unpaid principal balance less an allowance for loan losses and net deferred loan origination fees. Interest income is computed using the simple interest method and is recorded in the period earned. Loan origination fees collected and certain loan origination costs are deferred and the net amount is accreted as income using a method that approximates the level yield method over the life of the related loans.

Loans are considered to be impaired when, in management's judgment and based on current information, the full collection of principal and interest becomes doubtful. A loan is also considered impaired if its terms are modified in a troubled debt restructuring. Impaired loans are placed in non-performing status, and future payments are applied to principal until such time as collection of the obligation is no longer doubtful. Interest accrual resumes only when loans return to performing status. To return to performing status, loans must be fully current, and continued timely payments must be a reasonable expectation. Loans are generally placed on non-accrual status when principal or interest becomes ninety days past due, or when payment in full is not anticipated. When a loan is placed on non-accrual status, interest accrued but not received is generally reversed against interest income. Cash receipts on non-accrual loans are not recorded as interest income, but are used to reduce principal.

The Company identifies impaired loans through its normal internal loan review process. Loans on the Company's potential problem loan list are considered potentially impaired loans. These loans are evaluated in determining whether all outstanding principal and interest are expected to be collected. Loans are not considered impaired if a minimal payment delay occurs and all amounts due, including accrued interest at the contractual interest rate for the period of delay, are expected to be collected. Management has determined that the Company had \$34,158,000 and \$13,172,000 in impaired loans at December 31, 2009 and 2008, respectively.

Allowance for Loan Losses — The allowance for loan losses is established as losses are estimated to have occurred through a provision for loan losses charged to earnings. Loan losses are charged against the allowance when management believes the uncollectability of a loan balance is confirmed. Subsequent recoveries, if any, are credited to the allowance.

The allowance for loan losses is evaluated on a regular basis by management and is based upon management's periodic review of the collectability of the loans in light of historical experiences, the nature and volume of the loan portfolio, adverse situations that may affect the borrower's ability to repay, estimated value of any underlying collateral and prevailing economic conditions. This evaluation is inherently subjective as it requires estimates that are susceptible to significant revision as more information becomes available.

The allowance consists of specific, general and unallocated components. The specific component relates to loans that are classified as either doubtful, substandard or special mention. For such loans that are also classified as impaired, an allowance is established when the discounted cash flows (or collateral value or observable market price) of the impaired loan is lower than the carrying value of the loan. The general component covers non-classified loans and is based on historical loss experience adjusted for qualitative factors. An unallocated component is maintained to cover uncertainties that could affect management's estimate of probable losses. The unallocated component of the allowance reflects the margin of imprecision inherent in the underlying assumptions used in the methodologies for estimating specific and general losses in the portfolio.

A loan is considered impaired when, based on current information and events, it is probable that the Company will be unable to collect the scheduled payments of principal or interest when due according to the contractual terms of the loan agreement. Factors considered by management in determining impairment include payment status, collateral value, and the probability of collecting scheduled principal and interest payments due. Loans that experience insignificant payment delays and payment shortfalls generally are not classified as impaired. Management determines the significance of payment delays and payment shortfalls on a case-by-case basis, taking into consideration all of the circumstances surrounding the loan and the borrower, including the length of the delay, the reasons for the delay, the borrower's prior payment record and the amount of the shortfall in relation to the principal and interest owed. Impairment is measured on a loan by loan basis for commercial and construction loans by either the present value of expected future cash flows discounted at the loan's effective interest rate, the loan's obtainable market price, or the fair value of the collateral if the loan is collateral dependent.

Large groups of smaller balance homogeneous loans are collectively evaluated for impairment. Accordingly, the Company does not separately identify individual consumer and residential loans for impairment disclosures, unless such loans are the subject of a restructuring agreement.

Bank-Owned Life Insurance — The Company made the decision to sell these policies in order to help reduce assets, thereby improving the Bank's risk based capital ratio. During the first quarter of 2009, the Company began the process of divesting of its key employee life insurance policies by selling policies at no gain or loss. Income from these policies and changes in the net cash surrender value are currently recorded in non-interest income. The final policy was sold in April 2009.

Advertising - Advertising, promotional, and other business development costs generally are expensed as incurred. External costs incurred in producing media advertising are expensed the first time the advertising takes place. External costs relating to direct mailing costs are expensed in the period in which the direct mailings are sent.

Property and Equipment - Premises, furniture and equipment are stated at cost, less accumulated depreciation. Depreciation expense is computed using the straight-line method, based on the estimated useful lives for furniture and equipment of 5 to 10 years. Leasehold improvements are amortized over the life of the lease. Maintenance and repairs are charged to current expense. The costs of major renewals and improvements are capitalized.

Residential Loan Origination Fees - The Company offers residential loan origination services to its customers in its immediate market area. The loans are offered on terms and prices offered by the Company's correspondents and are closed in the name of the correspondents. The Company receives fees for services it provides in conjunction with the origination services it provides. The fees are recognized at the time the loans are closed by the Company's correspondent.

Income Taxes - The consolidated financial statements have been prepared on the accrual basis. When income and expenses are recognized in different periods for financial reporting purposes versus for the purposes of computing income taxes currently payable, deferred taxes are provided on such temporary differences.

The Company has analyzed filing positions in all of the federal and state jurisdictions where it is required to file income tax returns, as well as all open tax years in these jurisdictions. The Company believes that its income tax filing positions taken or expected to be taken in an its tax returns will more likely than not be sustained upon audit by the taxing authorities and does not anticipate any adjustments that will result in a material adverse impact on the Company's financial condition, results of operations, or cash flow. Therefore, no reserves for uncertain income tax positions have been recorded.

Deferred tax assets and liabilities are recognized for the expected future tax consequences of events that have been recognized in the consolidated financial statements or tax returns. Income taxes are the sum of amounts currently payable to taxing authorities and the net changes in income taxes payable or refundable in future years. Deferred tax assets and liabilities are measured using the enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be realized or settled. Income taxes deferred to future years are determined utilizing an asset and liability approach. This method gives consideration to the future tax consequences associated with differences between financial accounting and tax bases of certain assets and liabilities which are principally the allowance for loan losses, depreciable premises and equipment, and net operating loss carry-forwards. As of December 31, 2009, in consideration of recent financial results, the uncertainty involved in projecting near-term profitability, and evaluation of appropriate tax planning strategies, management has provided a 100% valuation allowance to reflect its estimate that the deferred tax assets are not more-than-likely-than-not to be realized.

Earnings Per Share - Basic earnings per share represents the net income allocated to shareholders divided by the weighted-average number of common shares outstanding during the period. Diluted earnings per share reflect the impact of additional common shares that would have been outstanding if dilutive potential common shares had been issued. Potential common shares that may be issued by the Company relate to both outstanding warrants and stock options, and are determined using the treasury stock method.

Stock-based Compensation - The Company has adopted the fair value recognition provisions to account for compensation costs under its stock option plans. The Company previously utilized the intrinsic value method. Under the intrinsic value method, no compensation costs were recognized for the Company's stock options because the option exercise price in its plans equaled the market price on the date of grant.

The Company elected to use the modified prospective method to account for the transition from the intrinsic value method to the fair value recognition method. Under the modified prospective method, compensation cost is recognized from the adoption date forward for all new stock options granted and for any outstanding unvested awards as if the fair value method had been applied to those awards as of the date of grant.

Off-Balance Sheet Financial Instruments - In the ordinary course of business, the Company enters into off-balance sheet financial instruments consisting of commitments to extend credit and letters of credit. These financial instruments are recorded in the financial statements when they become payable by the customer.

Recently Issued Accounting Standards - The following is a summary of recent authoritative pronouncements that could impact the accounting, reporting, and / or disclosure of financial information by the Company.

In June 2009, the Financial Accounting Standards Board ("FASB") issued guidance which restructured generally accepted accounting principles ("GAAP") and simplified access to all authoritative literature by providing a single source of authoritative nongovernmental GAAP. The guidance is presented in a topically organized structure referred to as the FASB Accounting Standards Codification ("ASC"). The new structure is effective for interim or annual periods ending after September 15, 2009. All existing accounting standards have been superseded and all other accounting literature not included is considered nonauthoritative.

The FASB issued new accounting guidance on accounting for transfers of financial assets in June 2009. The guidance limits the circumstances in which a financial asset should be derecognized when the transferor has not transferred the entire financial asset by taking into consideration the transferor's continuing involvement. The standard requires that a transferor recognize and initially measure at fair value all assets obtained (including a transferor's beneficial interest) and liabilities incurred as a result of a transfer of financial assets accounted for as a sale. The concept of a qualifying special-purpose entity is no longer applicable. The standard is effective for the first annual reporting period that begins after November 15, 2009, for interim periods within the first annual reporting period, and for interim and annual reporting periods thereafter. Earlier application is prohibited. The Company does not expect the guidance to have any impact on the Company's financial statements. The ASC was amended in December, 2009, to include this guidance.

Guidance was issued in June 2009 requiring a company to analyze whether its interest in a variable interest entity ("VIE") gives it a controlling financial interest that should be included in consolidated financial statements. A company must assess whether it has an implicit financial responsibility to ensure that the VIE operates as designed when determining whether it has the power to direct the activities of the VIE that significantly impact its economic performance, making it the primary beneficiary. Ongoing reassessments of whether a company is the primary beneficiary are also required by the standard. This guidance amends the criteria to qualify as a primary beneficiary as well as how to determine the existence of a VIE. The standard also eliminates certain exceptions that were previously available. This guidance is effective as of the beginning of each reporting entity's first annual reporting period that begins after November 15, 2009, for interim periods within that first annual reporting period, and for interim and annual reporting periods thereafter. Earlier application is prohibited. Comparative disclosures will be required for periods after the effective date. The Company does not expect the guidance to have any impact on the Company's financial position. An update was issued in December, 2009, to include this guidance in the ASC.

Also in January, 2010, an amendment was issued to clarify the scope of subsidiaries for consolidation purposes. The amendment provides that the decrease in ownership guidance should apply to (1) a subsidiary or group of assets that is a business or nonprofit activity, (2) a subsidiary that is a business or nonprofit activity that is transferred to an equity method investee or joint venture, and (3) an exchange of a group of assets that constitutes a business or nonprofit activity for a noncontrolling interest in an entity. The guidance does not apply to a decrease in ownership in transactions related to sales of in substance real estate or conveyances of oil and gas mineral rights. The update is effective for the interim or annual reporting periods ending on or after December 15, 2009 and had no impact on the Company's financial statements.

Other accounting standards that have been issued or proposed by the FASB or other standards-setting bodies are not expected to have a material impact on the Company's financial position, results of operations or cash flows.

Risks and Uncertainties - In the normal course of its business, the Company encounters two significant types of risk: economic and regulatory. There are three main components of economic risk: interest rate risk, credit risk and market risk. The Company is subject to interest rate risk to the degree that its interest-bearing liabilities mature or reprice at different speeds, or on different bases, than its interest-earning assets. Credit risk is the risk of default on the Company's loan portfolio that results from borrower's inability or unwillingness to make contractually required payments. Market risk reflects changes in the value of collateral underlying loans receivable and the valuation of real estate held by the Company.

The Company is subject to the regulations of various governmental agencies. These regulations can and do change significantly from period to period. The Company also undergoes periodic examinations by the regulatory agencies, which may subject it to further changes with respect to asset valuations, amounts of required loss allowances and operating restrictions from the regulators' judgments based on information available to them at the time of their examination. On June 29, 2009, the Bank entered into a the MOU with the Commissioner Banking of the South Carolina State Board of Financial Institutions and the Regional Director of the FDIC's Atlanta Regional Office. In addition on February 23, 2010 the Bank has successfully completed negotiations with the FDIC and has agreed to enter into the Consent Order with the South Carolina State Board of Financial Institutions and the FDIC. The Consent Order supersedes the MOU. Please see more details regarding the MOU and Consent Order in Note 2.

The Bank is subject to the FDIC insurance premiums. Legislation has recently passed that imposed a one time FDIC insurance premium that equated to a \$178,000 one time charge to the Bank in 2009. This was expensed in June 2009 and was paid September 30, 2009.

Reclassifications - Certain captions and amounts in the prior financial statements were reclassified to conform with the 2009 presentation. Such reclassifications had no effect on previously reported net income or shareholders' equity.

NOTE 2 — REGULATORY ACTIONS AND GOING CONCERN CONSIDERATIONS

Consent Order

Following the FDIC's safety and soundness examination of the Bank in the fourth quarter of 2009, the Bank entered into the Consent Order with the FDIC and the South Carolina Board of Financial Institutions on February 23, 2010. The Consent Order conveys specific actions needed to address certain findings from the FDIC's Report of Examination and to address the Bank's current financial condition, primarily related to policy and planning issues, oversight, loan concentrations and classifications, non-performing loans, liquidity/funds management, and capital planning.

Under the terms of the Consent Order, the Bank's various sources of liquidity will be restricted. Based on information included in the FDIC's report, the Bank's credit risk rating at the PHLB has been negatively impacted, resulting in reduced borrowing capacity. This action also restricts the Bank's ability to accept, renew, or roll over brokered deposits. In addition, the Bank's ability to borrow funds from the Federal Reserve Bank Discount Window as a source of short-term liquidity is not guaranteed. The Federal Reserve Discount Window borrowing capacity has been curtailed to only overnight terms, contingent upon credit approval for each transaction.

In addition, the Consent Order requires the Bank to, among other things,

- establish, within 30 days from the effective date of the Consent Order, a plan to monitor compliance with the Consent Order, which shall be monitored by the Bank's Board of Directors;
- ensure the Bank has qualified management in place to carry out the policies of the Bank's Board of Directors and operate the Bank in a safe and sound manner;
- achieve and maintain, within 120 days from the effective date of the Consent Order, Total Risk Based capital at least equal to 10% of risk-weighted assets and Tier 1 capital at least equal to 8% of total assets;
- determine, within 30 days of the last day of the calendar quarter, its capital ratios. If any capital measure falls below the established minimum, within 30 days provide a written plan describing the means and timing by which the Bank shall increase such ratios to or in excess of the established minimums;
- develop, within 45 days from the effective date of the Consent Order, a written analysis and assessment of the Bank's management and staffing needs;
- establish, within 60 days from the effective date of the Consent Order, a comprehensive policy for determining the

adequacy of the Bank's allowance for loan and lease losses, which must provide for a review of the Bank's allowance for loan and lease losses at least once each calendar quarter;

- enhance, within 60 days from the effective date of the Consent Order, our written plan for the reduction of classified assets, which shall include, among other things, a reduction of the Bank's risk position in each asset in excess of \$250,000 that is classified as "Substandard" or "Doubtful";
- not extend any additional credit to any borrower who has a loan or other extension of credit from the Bank that has been charged off or classified, in whole or in part, "loss" or "doubtful" and is uncollected. In addition, the Bank may not extend any additional credit to any borrower who has a loan or other extension of credit from the Bank that has been classified, in whole or in part, "substandard" and is uncollected, unless the Bank's Board of Directors determines that failure to extend further credit to a particular borrower would be detrimental to the best interests of the Bank;
- perform, within 45 days from the effective date of the Consent Order, a risk segmentation analysis with respect to the Bank's Concentrations of Credit and a written plan to systematically reduce any segment of the portfolio that is an undue concentration of credit;
- revise, within 60 days from the effective date of the Consent Order, the Bank's internal loan review and grading system to provide for the periodic review of the Bank's loan portfolio in order to identify and categorize the Bank's loans, and other extensions of credit which are carried on the Bank's books as loans, on the basis of credit quality;
- formulate and implement, within 60 days from the effective date of the Consent Order, a profit plan and comprehensive budget for all categories of income and expense, which must address, at minimum, goals and strategies for improving and sustaining the earnings of the Bank, the major areas in and means by which the Bank will seek to improve the Bank's operating performance, and the operating assumptions that form the basis for and adequately support major projected income and expense components of the plan;
- enhance, within 60 days from the effective date of the Consent Order, our written funds management plan addressing liquidity, contingent funding, and asset liability management;
- not accept, renew, or rollover any brokered deposits. The Bank must develop and submit to the FDIC, within 30 days from the effective date of the order, a plan for eliminating its reliance on brokered deposits. In addition, the Bank cannot offer an effective yield in excess of 75 basis points on interest paid on deposits (including brokered deposits, if approval is granted for the Bank to accept them) of comparable size and maturity in either the Bank's normal market area or in the market area in which such deposits would otherwise be accepted. Thus, for deposits in the Bank's own normal market area, the Bank must offer rates that are not in excess of 75 basis points over the average local rates. For non-local deposits, the Bank must offer rates that are not in excess of 75 basis points over either (1) the Bank's own local rates or (2) the applicable non-local rates;
- not declare or pay any dividends or bonuses or make any distributions of interest, principal, or other sums on subordinated debentures without the prior approval of the supervisory authorities; and
- furnish, by within 45 days from the effective date of the Consent Order and within 45 days of the end of each quarter thereafter, written progress reports to the supervisory authorities detailing the form and manner of any actions taken to secure compliance with the Consent Order.

The Bank will continue to serve customers in all areas, including processing banking transactions, paying competitive rates on deposits, and providing access to lines of credit. All customer deposits are fully insured to the highest limits set by the FDIC, which are \$250,000 for individually titled accounts and \$250,000 for individually titled IRA accounts. In addition, the Bank participates in the FDIC Transaction Account Guarantee Program. Under

this program, all non-interest bearing transaction accounts are fully guaranteed by the FDIC for the entire amount of the account. The guarantee also applies to interest bearing transaction accounts with interest rates of 0.50 percent or less. This program is in addition to and separate from the coverage available under the FDIC general deposit insurance rules.

If the Bank fail to comply with the capital and liquidity funding requirements in the Consent Order, or suffer a continued deterioration in our financial condition, the Bank may be subject to being placed into a federal conservatorship or receivership by the FDIC, with the FDIC appointed as conservator or receiver.

Going Concern Considerations

The going concern assumption is a fundamental principle in the preparation of financial statements. It is the responsibility of management to assess the Company's ability to continue as a going concern. In assessing this assumption, the Company has taken into account all available information about the future, which is at least, but is not limited to, twelve months from the balance sheet date of December 31, 2009. The Company has a history of profitable operations and sufficient sources of liquidity to meet its short-term and long-term funding needs. However, the Bank's financial condition has suffered during 2009 from the extraordinary effects of what may ultimately be the worst economic downturn since the Great Depression.

The effects of the current economic environment are being felt across many industries, with financial services and residential real estate being particularly hard hit. The effects of the economic downturn have been particularly severe during the last 150 days. The Bank, with a loan portfolio consisting of a concentration in commercial real estate loans including residential construction and development loans, has seen a decline in the value of the collateral securing its portfolio as well as rapid deterioration in its borrowers' cash flow and ability to repay their outstanding loans to the Bank. As a result, the Bank's level of nonperforming assets has increased substantially during 2009 to \$42.4 million. For the year ended December 31, 2009, the Bank recorded a \$17.0 million provision increase the allowance for loan losses to a level which, in managements' best judgment, adequately reflected the increased risk inherent in the loan portfolio as of December 31, 2009.

The Company and the Bank operate in a highly-regulated industry and must plan for the liquidity needs of each entity separately. A variety of sources of liquidity are available to the Bank to meet its short-term and long-term funding needs. Although a number of these sources have been limited following execution of the Consent Order with the FDIC and the South Carolina Board of Financial Institutions, management has prepared forecasts of these sources of funds and the Bank's projected uses of funds during 2010 in an effort to ensure that the sources available are sufficient to meet the Bank's projected liquidity needs for this period.

The Company relies on dividends from the Bank as its primary source of liquidity. The Company is a legal entity separate and distinct from the Bank. Various legal limitations restrict the Bank from lending or otherwise supplying funds to the Company to meet its obligations, including paying dividends. In addition, the terms of the Consent Order described above will further limit the Bank's ability to pay dividends to the Company to satisfy its funding needs.

The Company will also need to raise additional capital to increase capital levels to meet the standards set forth by the FDIC. As a result of the recent downturn in the financial markets, the availability of many sources of capital (principally to financial services companies) has become significantly restricted or has become increasingly costly as compared to the prevailing market rates prior to the volatility. Management cannot predict when or if the capital markets will return to more favorable conditions. Management is actively evaluating a number of capital sources asset reductions and other balance sheet management strategies to ensure that the Bank's projected level of regulatory capital can support its balance sheet.

There can be no assurances that the Company will be successful in its efforts to raise additional capital during 2010. An equity financing transaction of this type would result in substantial dilution to the Company's current shareholders and could adversely affect the market price of the Company's common stock. It is difficult to predict if these efforts will be successful, either on a short-term or long-term basis. Should these efforts be unsuccessful, due to the

regulatory restrictions which exist that restrict cash payments between the Bank and the Company, the Company may be unable to realize its assets and discharge its liabilities in the normal course of business.

As a result of management's assessment of the Company's ability to continue as a going concern, the accompanying consolidated financial statements for the Company have been prepared on a going concern basis, which contemplates the realization of assets and the discharge of liabilities in the normal course of business for the foreseeable future, and does not include any adjustments to reflect the possible future effects on the recoverability or classification of assets.

NOTE 3 — RESTRICTIONS ON CASH AND DUE FROM BANKS

The Bank is required to maintain average reserve balances, computed by applying prescribed percentages to its various types of deposits, either at the Bank or on deposit with the Federal Reserve Bank. At December 31, 2009 and 2008, these required reserves were met by vault cash.

NOTE 4 — INVESTMENT SECURITIES

The amortized costs and fair values of investment securities are as follows (in thousands):

	Amortized Cost	Gross Unrealized		Fair Value
		Gains	Losses	
As of December 31, 2009				
Available for sale				
Mortgage-backed	\$ 104,672	\$ 77	\$ (1,211)	\$ 103,538
Equity securities	100	—	—	100
Total available for sale	<u>\$ 104,772</u>	<u>\$ 77</u>	<u>\$ (1,211)</u>	<u>\$ 103,638</u>
As of December 31, 2008				
Available for sale				
Government sponsored enterprises	\$ 19,001	\$ 85	\$ —	\$ 19,086
Mortgage-backed	27,768	648	—	28,416
Equity securities	100	—	—	100
Total available for sale	<u>\$ 46,869</u>	<u>\$ 733</u>	<u>\$ —</u>	<u>\$ 47,602</u>

The amortized costs and fair values of investment securities available for sale at December 31, 2009 and 2008, by contractual maturity, are shown below (in thousands).

	December 31, 2009		December 31, 2008	
	Amortized Cost	Fair Value	Amortized Cost	Fair Value
Available for sale				
Due within one year(1)	\$ 100	\$ 100	\$ 3,101	\$ 3,140
Due after one through five years	—	—	17,594	17,694
Due after five through ten years	—	—	5,225	5,437
Due after ten years	104,672	103,538	20,949	21,331
Total available for sale	<u>\$ 104,772</u>	<u>\$ 103,638</u>	<u>\$ 46,869</u>	<u>\$ 47,602</u>

(1) Marketable securities are included as due within one year.

The table below summarizes gross unrealized losses on investment securities and the fair market value of the related securities, aggregated by investment category and length of time that individual securities have been in a continuous unrealized loss position, at December 31, 2009 (in thousands).

As of December 31, 2009	Less than 12 months		12 months or longer		Total	
	Fair Value	Unrealized Loss	Fair Value	Unrealized Gain/(Loss)	Fair Value	Unrealized Gain/(Loss)
Available for sale						
Mortgage-backed	\$ 89,987	\$ 1,211	\$ —	\$ —	\$ 89,987	\$ 1,211
Total available for sale	\$ 89,987	\$ 1,211	\$ —	\$ —	\$ 89,987	\$ 1,211

At December 31, 2009, the Company had mortgage-backed securities in an unrealized loss position. The Company believes, based on industry analyst reports and credit ratings that the deterioration in value is attributed to changes in market interest rates and not in the credit quality of the issuer and therefore, these losses are not considered other-than-temporary. The Company has the intent to hold these securities.

At December 31, 2008, the Company did not have any securities in an unrealized loss position.

The Company recognized \$1.2 million in gains on sale of investments for the year ended December 31, 2009. No investment securities were sold during 2008.

At December 31, 2009, there were \$37.8 million of securities pledged as collateral for repurchase agreements from brokers and \$5.2 million pledged against secured federal funds lines. There were \$36.1 million of securities pledged as collateral for repurchase agreements from brokers at December 31, 2008 and \$6 million pledged against secured federal funds lines.

Management limits its credit risk by generally investing its portfolio principally in obligations of the United States of America, its agencies or its corporations. Included in the investment portfolio at December 31, 2009, are mortgage-backed securities issued by the Government National Mortgage Association totaling \$104.7 million.

NOTE 5 — OTHER INVESTMENTS

Other investments consisted of FHLB stock with a cost of \$1,599,000 and \$1,805,000 at December 31, 2009 and 2008, respectively. All of the FHLB stock is used to collateralize advances with the FHLB. Upon request, the stock may be sold back to the FHLB, at cost. Due to regulatory restrictions the FHLB is under, such stock repurchases have been indefinitely put on hold.

NOTE 6 — LOANS RECEIVABLE

Our classifications of loans receivable for the years ended December 31, 2009 and 2008 are summarized as follows (in thousands):

	December 31,	
	2009	2008
Real estate - construction	\$ 81,128	\$ 129,777
Real estate - mortgage	167,296	154,838
Commercial and industrial	25,028	33,303
Consumer and other	1,652	2,989
Total loans, gross	275,104	320,907
Less allowance for loan losses	(12,963)	(8,088)
Total loans, net	\$ 262,141	\$ 312,819

Loans are stated net of deferred fees and costs.

The Bank had \$29,369,000 and \$9,916,000 of loans classified as non-accrual status as of December 31, 2009 and 2008, respectively. At December 31, 2009 and 2008, loans past due 90 days or more and still accruing amounted to \$560,000 and \$6,000, respectively. See additional disclosures regarding Loans Receivable and Allowance for Loan Losses in Note 1.

Activity in the allowance for loan losses during the years ended December 31, 2009 and 2008 is summarized below (in thousands):

	Year Ended December 31,	
	2009	2008
Balance, beginning of year	\$ 8,088	\$ 4,217
Provision charged to operations	16,990	7,168
Charge-offs, net	(12,115)	(3,293)
Balance, end of year	<u>\$ 12,963</u>	<u>\$ 8,088</u>
	Year Ended December 31,	
	2009	2008
Impaired Loans:		
No valuation allowance required	\$ 19,525	\$ 2,590
Valuation allowance required	14,633	10,582
Total impaired loans	<u>\$ 34,158</u>	<u>\$ 13,172</u>
Allowance for loan losses on impaired loans at year end	<u>\$ 2,039</u>	<u>\$ 2,802</u>
Average investment in impaired loans	\$ 24,374	\$ 5,109
Interest income recognized on impaired loans:		
Accrual basis	\$ 1,240	\$ 671
Potential problem loans	\$ 15,933	\$ 425

At December 31, 2009 and 2008, \$36.4 million and \$90.9 million of loans were pledged to the FHLB to secure advances.

NOTE 7 — PROPERTY AND EQUIPMENT

Property and equipment consisted of the following (in thousands):

	December 31,	
	2009	2008
Land	\$ 786	\$ 786
Buildings and leasehold improvements	2,845	2,845
Property and equipment	2,833	2,758
Construction in progress	—	95
Total	<u>6,464</u>	<u>6,484</u>
Less, accumulated depreciation	(2,597)	(1,866)
Property and equipment, net	<u>\$ 3,867</u>	<u>\$ 4,618</u>

The Company recorded \$735,000 and \$718,000 in depreciation expense of property and equipment for the years ended December 31, 2009 and 2008, respectively. Construction in progress related to a pending branch in Spartanburg, however, the project was abandoned in 2009. All costs associated with the pending branch were either expensed or reimbursed.

NOTE 8 — DEPOSITS

The following table sets forth the deposits of the Company by category as of December 31, 2009 and 2008 (in thousands).

	December 31,	
	2009	2008
Non-interest bearing demand	\$ 21,829	\$ 22,162
Interest bearing demand	18,588	16,449
Savings	82,295	14,461
Time deposits less than \$100,000	30,054	32,112
Time deposits of \$100,000 or over	21,014	25,161
Brokered time deposits	202,783	186,298
Total deposits	<u>\$ 376,563</u>	<u>\$ 296,643</u>

Deposits from outside the Company's market area obtained through brokers amounted to 53.85% and 62.80% of total deposits at December 31, 2009 and 2008, respectively.

Interest expense on time deposits of \$100,000 or over was \$796,000 and \$2,050,000 for years ending December 31, 2009 and 2008, respectively.

At December 31, 2009, the scheduled maturities of certificates of deposit were as follows (in thousands):

Maturing In:	Amount
2010	\$ 249,331
2011	4,381
2012	45
2013	94
Total	<u>\$ 253,851</u>

NOTE 9 — REPURCHASE AGREEMENTS

At December 31, 2009 and 2008, the Bank had sold \$30.0 million of securities under agreements to repurchase with brokers with a weighted average rate of 3.24% and an average maturity of 78 months at December 31, 2009. The maximum amount outstanding at any month-end during 2009 and 2008 was \$30.0 million. The average balance for the year was \$30.0. These agreements were secured with approximately \$37.6 million of investment securities.

NOTE 10 — FEDERAL HOME LOAN BANK ADVANCES

At December 31, 2009 the Bank did not have any outstanding FHLB advances.

At December 31, 2008, the Bank had \$25 million in FHLB advances. The advances were secured with approximately \$45.5 million in loans and \$1.8 million of stock in the FHLB. These advances were repaid in 2009.

NOTE 11 — NOTE PAYABLE

At December 31, 2008, the Company had a \$1.6 million outstanding on a line of credit at the Bank of Tennessee. The Company had pledged all of the stock of the Bank as collateral for this line of credit. The Company repaid this note payable on February 27, 2009 and the line was terminated.

NOTE 12 — SUBORDINATED DEBT

During the third quarter of 2008, we commenced a subordinated debt offering to enhance and strengthen the levels of capital and liquidity at the holding company such that we could improve the levels of regulatory capital at the Bank. We raised \$4.325 million before we closed the offering on October 15, 2008. The subordinated notes were sold to a limited number of purchasers in a private offering, bear an interest rate of 11.5%, are callable by the Company after September 30, 2011, at a premium, and mature in 2018. The subordinated debt has been structured to fully count as Tier 2 regulatory capital on a consolidated basis.

(Dollars in thousands)	Ending Balance	Period- End Rate	Average Balance	Weighted -Average Rate for Year	Maximum Outstanding at any Month End
December 31, 2009					
Subordinated debt	\$ 4,325	11.50%	\$ 4,325	11.50%	\$ 4,325

Due to diminishing cash available at the Holding company level, if we are unable to raise additional capital, we will have to discontinue paying interest on the subordinated debentures after the March 2010 payments due to lack of funds.

NOTE 13 — INCOME TAXES

Income tax expense for the year ended December 31, 2009 and 2008 is summarized as follows (in thousands):

	2009	2008
Current portion:		
Federal	\$ (1,592)	\$ (253)
State	—	—
Total current income tax expense	(1,592)	(253)
Deferred income tax expense (benefit)	2,580	(1,553)
Income tax expense (benefit)	<u>\$ 988</u>	<u>\$ (1,806)</u>

A reconciliation between the income tax expense and the amount is computed by applying the Federal statutory rate of 34% for 2009 and 2008 to income before income taxes follows:

	2009	2008
Federal income tax expense at statutory rate	\$ (5,885)	\$ (1,753)
Change in deferred tax asset valuation allowance	6,648	—
Other	225	(53)
Income tax expense	<u>\$ 988</u>	<u>\$ (1,806)</u>

Net loss to common shareholders
 Weighted-average common shares outstanding — basic
 Weighted-average common shares outstanding — diluted
 Loss per share — basic
 Loss per share — diluted

	December 31,	
	2009	2008
	\$ (18,296)	\$ (3,350)
	4,698,697	4,698,697
	4,698,697	4,698,697
	\$ (3.89)	\$ (0.71)
	\$ (3.89)	\$ (0.71)

NOTE 18 — STOCK COMPENSATION PLANS

Upon completion of the offering, the Company agreed to issue warrants to the organizing directors for the purchase of one share of common stock at \$6.40 per share for every two shares purchased in the stock offering, up to a maximum of 15,625 warrants per director. The warrants were fully vested 120 days after January 18, 2005 and will expire on January 18, 2015. Warrants held by directors of the Company will expire 90 days after the director ceases to be a director or officer of the Company (365 days if due to death or disability). The Company issued a total of 171,404 warrants. In addition, the Company has adopted a stock option plan. As of December 31, 2009 the Company has 756,033 outstanding options to employees and directors. On January 16, 2006 the Company adopted a resolution that terminated the “evergreen” provision of the Company 2005 Stock Incentive Plan. As a result, the number of shares of common stock issuable under the plan shall not be further increased in connection with any future share issuances by the Company. The exercise price of each option is equal to the market price of the Company’s stock on the date of grant. The maximum term is ten years, and they vest in no greater than five years. When necessary, the Company may purchase shares on the open market to satisfy share option exercises. During the ensuing year, the Company is expecting to acquire no shares.

The table set forth below summarizes stock option activity for the Company’s stock compensation plans for the years ended December 31, 2009 and 2008 as adjusted for all stock splits.

	Stock Options		Warrants	
	Number	Weighted-Average Exercise Price	Number	Weighted-Average Exercise Price
Outstanding at December 31, 2007				
Granted	761,493	\$ 7.17	171,404	\$ 6.40
Forfeited	28,600	7.82	—	—
Exercised	(25,980)	10.57	—	—
Outstanding at December 31, 2008	764,113	7.08	171,404	6.40
Granted	18,850	2.51	—	—
Forfeited	(26,930)	6.57	—	—
Exercised	—	—	—	—
Outstanding at December 31, 2009	756,033	\$ 6.99	171,404	\$ 6.40

At December 31, 2009 there was no intrinsic value for stock options outstanding and stock options exercisable.

The table set forth below summarizes non-vested stock options as of December 31, 2009 and 2008.

	Weighted-Average Number	Weighted-Average Grant Date Fair Value
Outstanding at December 31, 2007	42,273	\$ 6.79
Granted	28,600	5.51
Vested during the year	(7,913)	7.12
Forfeited during the year	(11,150)	5.62
Outstanding at December 31, 2008	51,810	5.33
Granted	18,850	1.45
Vested during the year	(10,897)	5.85
Forfeited during the year	(11,340)	2.76
Outstanding at December 31, 2009	48,423	\$ 4.32

As of December 31, 2009, there was \$159,989 in total unrecognized compensation cost related to non-vested share-based compensation arrangements, which is expected to be recognized over a weighted average period of 32 months. As of December 31, 2008, there was \$223,689 in total unrecognized compensation cost related to non-vested share-based compensation arrangements, which is expected to be recognized over a weighted average period of 42 months.

The fair value of each option granted is estimated on the grant date using the Black-Scholes option-pricing model with the following assumptions for 2009: dividend yield of 0%, expected term of 10 years, risk-free interest rate equal to the 10-year treasury rate on the respective grant date, and expected life of 10 years. Volatility assumed for options granted during 2009 ranged from 38% to 51%. The following assumptions were used for the 2008 estimates: dividend yield of 0%, expected term of 10 years, risk-free interest rate of 5.0%, expected life of 10 years, and expected volatility of 20%.

Stock compensation expense recognized in 2009 and 2008 was \$63,899 and \$68,498, respectively.

The following table summarizes information about stock options outstanding under the Company's plans at December 31, 2009 and 2008.

	Outstanding	Exercisable
2009	756,033	707,610
Number of options	5.47 years	5.29 years
Weighted average remaining life	\$ 6.99	\$ 6.85
Weighted average exercise price	\$ 16.80	\$ 16.80
High exercise price	\$ 1.75	\$ 4.55
Low exercise price		
2008	764,113	712,203
Number of options	6.42 years	6.26 years
Weighted average remaining life	\$ 7.08	\$ 6.74
Weighted average exercise price	\$ 16.80	\$ 16.80
High exercise price	\$ 6.40	\$ 6.40
Low exercise price		

No options were exercised in 2009 or 2008.

At December 31, 2009, all of the 171,404 warrants were exercisable and had an average remaining life of 5.05 years. At December 31, 2008, all of the 171,404 warrants were exercisable and had an average remaining life of 6.05 years.

NOTE 19 — EMPLOYEE BENEFIT PLAN

The Bank maintains an employee benefit plan for all eligible employees of the Bank under the provisions of Internal Revenue Code Section 401(k). The CommunitySouth 401(k) Plan (the "Plan"), adopted in 2006, allows for employee contributions. The Bank matches 50% of employee contributions up to a maximum of 1.25% of annual compensation. A total of \$31,735 and \$25,292 was charged to operations in 2009 and 2008, respectively, for the Company's matching contribution. Employees are immediately vested in their contributions to the Plan and become fully vested in the employer matching contribution after five years of service.

NOTE 20 — REGULATORY MATTERS

The Bank is subject to various regulatory capital requirements administered by the federal banking agencies. Failure to meet minimum capital requirements can initiate certain mandatory and possibly additional discretionary actions by regulators that, if undertaken, could have a direct material adverse effect on the Bank's financial condition. Under capital adequacy guidelines and the regulatory framework for prompt corrective action, the Bank must meet specific capital guidelines that involve quantitative measures of the Bank's assets, liabilities, and certain off-balance sheet items as calculated under regulatory accounting practices. The Bank's capital amounts and classification are also subject to qualitative judgments by the regulators about components, risk weightings, and other factors.

Quantitative measures established by regulation to ensure capital adequacy require the Bank to maintain minimum ratios of Tier 1 and total capital as a percentage of assets and off-balance sheet exposures, adjusted for risk weights ranging from 0% to 100%. Tier 1 capital consists of common shareholders' equity, excluding the unrealized gain or loss on securities available-for-sale, minus certain intangible assets. Tier 2 capital consists of the allowance for loan losses subject to certain limitations. Total capital for purposes of computing the capital ratios consists of the sum of Tier 1 and Tier 2 capital. The regulatory minimum requirements are 4% for Tier 1 and 8% for total risk-based capital.

The Bank is also required to maintain capital at a minimum level based on total assets, which is known as the leverage ratio. Only the strongest banks are allowed to maintain capital at the minimum requirement of 3%. All others are subject to maintaining ratios 1% to 2% above the minimum.

As of December 31, 2009, the most recent notification from the Bank's primary regulator categorized it as "undercapitalized" under the regulatory framework for prompt corrective action.

The FDIC completed its safety and soundness examination of the Bank in the fourth quarter of 2010. Based on the Bank's current financial condition, the Bank entered into the Consent Order with the FDIC and the South Carolina Board of Financial Institutions on February 23, 2010, which contains, among other things, a requirement that our Bank achieve and maintain minimum capital requirements that exceed the minimum regulatory capital ratios for "well capitalized" banks. Under this enforcement action, the Bank may no longer accept, renew, or roll over brokered deposits. In addition, under the Consent Order, the Bank no longer meets the regulatory requirements to be eligible for expedited processing of branch applications and certain other regulatory approvals, and the Bank is required to obtain FDIC approval before making certain payments to departing executives and before adding new directors or senior executives. The Bank's regulators have considerable discretion in whether to grant required approvals, and no assurance can be given that such approvals would be forthcoming. In addition, the Bank is required to take certain other actions in the areas of capital, liquidity, asset quality, and interest rate risk management, as well as to file periodic reports with the FDIC and the South Carolina Board of Financial Institutions regarding its progress in complying with the Consent Order. Any material failure to comply with the terms of the Consent Order could result in further enforcement action by the FDIC. While the Bank intends to take such actions as may be necessary to comply with the requirements of the Consent Order and subsequent FDIC guidance, the Bank may be unable to comply fully with the deadlines or other terms of the Consent Order. See Note 2 for further discussion of the Consent Order.

The following table summarizes the capital amounts and ratios of the Bank and the regulatory minimum requirements at December 31, 2009 and December 31, 2008.

	Actual		For Capital Adequacy Purposes		To Be Well-Capitalized Under Prompt Corrective Action Provisions	
	Amount	Ratio	Amount	Ratio	Amount	Ratio
December 31, 2009						
Tier 1 capital (to risk-weighted assets)	\$ 13,643,000	4.96%	\$ 11,008,000	4.00%	\$ 16,512,000	6.00%
Total capital (to risk-weighted assets)	17,201,000	6.25	22,016,000	8.00	27,521,000	10.00
Tier 1 capital (to average assets)	13,643,000	3.12	17,474,000	4.00	21,843,000	5.00
December 31, 2008						
Tier 1 capital (to risk-weighted assets)	\$ 30,836,000	8.92%	\$ 13,833,000	4.00%	\$ 20,750,000	6.00%
Total capital (to risk-weighted assets)	35,205,000	10.18	27,666,000	8.00	34,583,000	10.00
Tier 1 capital (to average assets)	30,836,000	7.98	15,450,000	4.00	19,313,000	5.00

The FRB has similar requirements for bank holding companies. The Company currently is not subject to these requirements because the FRB applies its guidelines on a bank-only basis for bank holding companies with less than \$500 million in consolidated assets.

NOTE 21 — LINES OF CREDIT

As of December 31, 2009 and 2008, the Bank had unused lines of credit to purchase federal funds from unrelated banks totaling \$5,000,000 and \$14,500,000, respectively. These lines of credit are available for general banking purposes. As of December 31, 2009 and 2008, the Bank has no funds drawn from these lines. These lines may be withdrawn without notice.

NOTE 22 — RESTRICTIONS ON SUBSIDIARY DIVIDENDS, LOANS, OR ADVANCES

The ability of the Company to pay cash dividends is dependent upon receiving cash in the form of dividends from the Bank. However, there are restrictions on the ability of the Bank to transfer funds to the Company in the form of cash dividends, loans, or advances. As a South Carolina state bank, the Bank may only pay dividends out of its net profits, after deducting expenses, including losses and bad debts. In addition, the Bank is prohibited from declaring a dividend on its shares of common stock until its surplus equals its stated capital and provisions of the Consent Order prohibiting the payment of dividends are lifted. At December 31, 2009 and 2008, the Bank had a deficit of \$19.1 million and \$872,916, respectively.

NOTE 23 — FINANCIAL INSTRUMENTS WITH OFF-BALANCE SHEET RISK

The Company is a party to financial instruments with off-balance sheet risk in the normal course of business to meet the financing needs of its customers. These financial instruments consist of commitments to extend credit and standby letters of credit. Commitments to extend credit are agreements to lend to a customer as long as there is no violation of any condition established in the contract. Commitments generally have fixed expiration dates or other termination clauses and may require payment of a fee. A commitment involves, to varying degrees, elements of credit and interest rate risk in excess of the amount recognized in the balance sheet. The Company's exposure to credit loss in the event of non-performance by the other party to the instrument is represented by the contractual notional amount of the instrument. Since certain commitments are expected to expire without being drawn upon, the total commitment amounts do not necessarily represent future cash requirements. The Company uses the same credit policies in making commitments to extend credit as it does for on-balance-sheet instruments. Letters of credit are conditional commitments issued to guarantee a customer's performance to a third party and have essentially the same credit risk as other lending facilities. The Company has not recorded a liability for the current carrying amount of the obligation to perform as a guarantor and no contingent liability was considered necessary, as such amounts were not considered material.

Collateral held for commitments to extend credit and letters of credit varies but may include accounts receivable, inventory, property, plant, equipment and income-producing commercial properties.

The following table summarizes the Company's off-balance sheet financial instruments whose contract amounts represent credit risk (in thousands):

	December 31,	
	2009	2008
Commitments to extend credit	\$ 14,451	\$ 36,260
Standby letters of credit	\$ 1,525	\$ 3,488

NOTE 24 — FAIR VALUE OF FINANCIAL INSTRUMENTS

GAAP requires disclosure of fair value information, whether or not recognized in the consolidated balance sheets, when it is practical to estimate the fair value. GAAP defines a financial instrument as cash, evidence of an ownership interest in an entity or contractual obligations, which require the exchange of cash, or other financial instruments. Certain items are specifically excluded from the disclosure requirements, including the Company's common stock, premises and equipment, accrued interest receivable and payable, and other assets and liabilities.

The fair value of a financial instrument is the amount at which the asset or obligation could be exchanged in a current transaction between willing parties, other than in a forced or liquidation sale. Fair value estimates are made at a specific point in time based on relevant market information and information about the financial instruments. Because no market value exists for a significant portion of the financial instruments, fair value estimates are based on judgments regarding future expected loss experience, current economic conditions, risk characteristics of various financial instruments, and other factors.

The Company has used management's best estimate of fair value based on the above assumptions. Thus, the fair values presented may not be the amounts, which could be realized, in an immediate sale or settlement of the instrument. In addition, any income taxes or other expenses, which would be incurred in an actual sale or settlement, are not taken into consideration in the fair values presented.

The following methods and assumptions were used to estimate the fair value of significant financial instruments:

Cash and Due from Banks - The carrying amount is a reasonable estimate of fair value.

Federal Funds Sold - Federal funds sold are for a term of one day, and the carrying amount approximates the fair value.

Investment Securities - The fair values of marketable equity securities are valued using quoted fair market prices.

Other Investments - The carrying value of non-marketable equity securities approximates the fair value since no ready market exists for the stocks.

Bank-owned Life Insurance - The cash surrender value of life insurance policies held by the Bank approximates fair values of the policies.

Loans Receivable - For certain categories of loans, such as variable rate loans which are repriced frequently and have no significant change in credit risk, fair values are based on the carrying amounts. The fair value of other types of loans is estimated by discounting the future cash flows using the current rates at which similar loans would be made to borrowers with similar credit ratings and for the same remaining maturities. In order to capture the change in credit risk, the current allowance for loan losses is also considered when determining fair value of loans receivable.

Deposits - The fair value of demand deposits, savings, and money market accounts is the amount payable on demand at the reporting date. The fair values of certificates of deposit are estimated using a discounted cash flow calculation that applies current interest rates to a schedule of aggregated expected maturities.

Repurchase Agreements - The fair value of repurchase agreements is estimated using a discounted cash flow calculation that applies prevailing market rates for comparable debt instruments.

FHLB Advances - The carrying value of these instruments is a reasonable estimate of fair value.

Note Payable - The carrying value of these instruments is a reasonable estimate of fair value.

Subordinated Debt — The fair value of subordinated debt is estimated using a discounted cash flow calculation that applies prevailing market rates for comparable instruments. Due to diminishing cash available at the holding company level, if we are unable to raise additional capital, we will have to discontinue paying interest on the subordinated debentures after the March 2010 payments due to lack of funds, and our 2009 fair value calculation reflects this.

The carrying values and estimated fair values of the Company's financial instruments at December 31, 2009 and 2008 are shown in the following table (in thousands).

	<u>Carrying Amount</u>	<u>Estimated Fair Value</u>
December 31, 2009		
Financial Assets		
Cash and due from banks	\$ 6,876	\$ 6,876
Federal funds sold	31,043	31,043
Investment securities, available for sale	103,638	103,638
Other investments	1,599	1,599
Loans, gross	275,104	260,894
Financial Liabilities		
Demand deposit, interest-bearing transaction, and savings accounts	\$ 122,712	\$ 122,712
Certificates of deposit and other time deposits	253,851	254,930
Repurchase agreements	30,000	31,557
Subordinated debt	4,325	2,062
December 31, 2008		
Financial Assets		
Cash and due from banks	\$ 5,251	\$ 5,251
Federal funds sold	4,625	4,625
Investment securities, available for sale	47,602	47,602
Other investments	1,805	1,805
Loans, gross	320,907	350,620
Bank-owned life insurance	5,437	5,437
Financial Liabilities		
Demand deposit, interest-bearing transaction, and savings accounts	\$ 53,072	\$ 53,072
Certificates of deposit and other time deposits	243,571	244,001
Repurchase agreements	30,000	30,190
FHLB advances	25,000	25,000
Note payable	1,570	1,570
Subordinated debt	4,325	5,500

(Dollars in thousands)	2009		2008	
	Notional Amount	Estimated Fair Value	Notional Amount	Estimated Fair Value
Off-Balance Sheet Financial Instruments:				
Commitments to extend credit	\$ 14,451	\$ —	\$ 36,260	\$ —
Standby Letters of Credit	\$ 1,525	\$ —	\$ 3,488	\$ —

GAAP requires new disclosure that establishes a framework for measuring fair value, and expands disclosure about fair value measurements. This disclosure enables the reader of the financial statements to assess the inputs used to develop those measurements by establishing a hierarchy for ranking the quality and reliability of the information used to determine fair values. Assets and liabilities carried at fair value will be classified and disclosed in one of the following three categories:

- Level 1: Quoted market prices in active markets for identical assets or liabilities.
- Level 2: Observable market based inputs or unobservable inputs that are corroborated by market data.
- Level 3: Unobservable inputs that are not corroborated by market data.

In determining appropriate levels, the Company performs a detailed analysis of the assets and liabilities that are subject to fair value measurement. At each reporting period, all assets and liabilities for which the fair value measurement is based on significant unobservable inputs are classified as Level 3.

The gross amounts of deferred tax assets and deferred tax liabilities are as follows:

	December 31,	
	2009	2008
Deferred tax assets		
Allowance for loan losses	\$ 3,426	\$ 2,417
Organization and start-up costs	79	84
Investment securities mark-to-market adjustment	386	—
Accrued interest on non-accrual loans	46	367
Other real estate owned	655	—
NOL carryforward	2,603	—
Other	54	9
Total deferred tax assets	<u>7,249</u>	<u>2,877</u>
Deferred tax asset valuation allowance	(7,034)	—
Deferred tax assets after valuation allowance	<u>215</u>	<u>2,877</u>
Deferred tax liabilities		
Loan origination costs	(69)	(89)
Investment securities mark-to-market adjustment	—	(238)
Depreciation	(45)	(159)
Prepaid expenses	(101)	(69)
Total deferred tax liabilities	<u>(215)</u>	<u>(535)</u>
Net deferred tax asset	<u>\$ —</u>	<u>\$ 2,342</u>

Deferred tax assets represent the future tax benefit of deductible differences and, if it is more likely than not that a tax asset will not be realized, a valuation allowance is required to reduce the recorded deferred tax assets to net realizable value. As of December 31, 2009, in consideration of the recent poor financial results, the uncertainty involved in projecting near-term profitability, and evaluation of appropriate tax planning strategies, management has provided a 100% valuation allowance to reflect its estimate of the amount of deferred tax assets which are more-than-likely-than-not to be realized. As of December 31, 2008, management determined that no valuation allowance was required as it was more likely than not that the recorded net deferred tax assets would be realized in full. The net deferred tax asset is included in the caption "other assets" on the balance sheet.

The Worker, Homeownership and Business Assistance Act of 2009, in general, extended the loss carryback of net operating losses to five years from two. The Company booked an additional tax refund of \$420,000 under the Act from the carryback of net operating losses in addition to booking \$2.0 million of refunds under tax regulations in effect before the 2009 Act.

The Company has analyzed the tax positions taken or expected to be taken in its tax returns and concluded it has no liability related to uncertain tax positions.

NOTE 14 — LEASES

The Company leases branch locations in Spartanburg, Mauldin, Anderson, Greer and Greenville as well as the loan operations center in Easley. The initial lease terms range from three to ten years with various renewal options. The minimum future rental payments under non-cancelable operating leases having remaining terms in excess of one year, for each of the next five years and in the aggregate are (in thousands):

2010	\$	320
2011		329
2012		343
2013		348
2014		353
Thereafter		606
Total minimum future rental payments	\$	<u>2,299</u>

NOTE 15 — COMMITMENTS AND CONTINGENCIES

The Company is subject to claims and lawsuits which arise primarily in the ordinary course of business. Management is not aware of any legal proceedings which would have a material adverse effect on the financial position or operating results of the Company.

NOTE 16 — RELATED PARTY TRANSACTIONS

Certain parties (principally certain directors and executive officers of the Company, their immediate families and business interests) ("affiliates") are loan customers in the normal course of business with the Bank. These loans are made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with unrelated persons and do not involve more than the normal risk of collectability. As of December 31, 2009 and 2008 the Bank had related party loans totaling \$19,578,004 and \$20,539,348, respectively. During 2009, advances on related party loans totaled \$1,314,265 and repayments were \$2,275,609. During 2008, advances on related party loans totaled \$7,310,239 and repayments were \$8,717,781.

Both at December 31, 2009 and 2008, affiliates had deposits with the Bank in the amounts of \$2.0 million and \$2.5 million, respectively.

The Company sold \$1.85 million of its subordinated debt to related parties. The debt was issued at the same terms of the other investors in the Company's subordinated debt offering.

The Company also enters into other transactions in the ordinary course of business with affiliates. Company policy requires transactions with affiliates to be on terms no more favorable than could be obtained from an unaffiliated third party and to be approved by a majority of disinterested directors. The following transaction was entered into with affiliates during the years ended December 31, 2009 and 2008:

- The loan operations center in Easley was leased from a partnership in which a Company director has a partnership interest. Lease payments on that office totaled \$42,750 and \$36,000 for the years ended December 31, 2009 and 2008, respectively.

NOTE 17 — SHARES OUTSTANDING AND EARNINGS PER SHARE

Basic earnings per share is computed by dividing the net income by the weighted-average number of common shares outstanding. Diluted earnings per share is computed by dividing the net income by the sum of the weighted-average number of common shares outstanding and dilutive common share equivalents using the treasury stock method. Dilutive common share equivalents include common shares issuable upon exercise of outstanding stock warrants and stock options.

The following is the basic and diluted income per share computation (in thousands, except per share data):

The tables below present the balances of assets and liabilities measured at fair value on a recurring basis by level within the valuation hierarchy (as described above) as of December 31, 2009 and 2008.

(Dollars in thousands)	December 31, 2009			
	Total	Level 1	Level 2	Level 3
Investment securities, available for sale	\$ 103,638	\$ —	\$ 103,638	\$ —

(Dollars in thousands)	December 31, 2008			
	Total	Level 1	Level 2	Level 3
Investment securities, available for sale	\$ 47,602	\$ —	\$ 47,602	\$ —

Certain assets and liabilities are measured at fair value on a nonrecurring basis; that is, the instruments are not measured at fair value on an ongoing basis but are subject to fair value adjustments in certain circumstances (for example, when there is evidence of impairment). The following tables present the assets and liabilities carried on the balance sheet by caption and by level within the valuation hierarchy (as described above) as of December 31, 2009 for which a nonrecurring change in fair value has been recorded during the year ended December 31, 2009.

(Dollars in thousands)	Carrying Value at December 31, 2009			
	Total	Level 1	Level 2	Level 3
Impaired loans	\$ 34,158	\$ —	\$ —	\$ 34,158
Other real estate owned	6,703	—	—	6,703
Repossessed collateral	942	—	—	942

(Dollars in thousands)	Fair Value Measurements Using Significant Unobservable Inputs (Level 3)			
	Impaired Loans	Other Real Estate Owned	Repossessed Collateral	Total
Beginning balance	\$ —	\$ —	\$ —	\$ —
Gains/(losses) included in earnings	—	(143)	—	(143)
Net additions	20,986	6,431	942	28,359
Transfers in/(out) of level 3	13,172	415	—	13,587
Ending balance	\$ 34,158	\$ 6,703	\$ 942	\$ 41,803

(Dollars in thousands)	Carrying Value at December 31, 2008			
	Total	Level 1	Level 2	Level 3
Impaired Loans	\$ 13,172	\$ —	\$ 13,172	\$ —
Other real estate owned	415	—	415	—

NOTE 25 — COMMUNITYSOUTH FINANCIAL CORPORATION (PARENT COMPANY ONLY)

Presented below are the condensed financial statements for CommunitySouth Financial Corporation (Parent Company only).

Condensed Balance Sheets
(dollars in thousands)

	December 31,	
	2009	2008
Assets		
Cash	\$ 357	\$ 3,029
Investment securities, available for sale	100	100
Investment in the Bank	12,509	31,327
Other assets	155	97
Total assets	<u>\$ 13,121</u>	<u>\$ 34,553</u>
Liabilities and shareholders' equity		
Other liabilities	\$ 125	\$ 130
Other borrowings	—	1,570
Subordinated debt	4,325	4,325
Shareholders' equity	8,671	28,528
Total liabilities and shareholders' equity	<u>\$ 13,121</u>	<u>\$ 34,553</u>

Condensed Statements of Operations
For the years ended December 31, 2009 and 2008
(dollars in thousands)

	2009	2008
Income	\$ —	\$ —
Expenses	<u>(602)</u>	<u>(257)</u>
Loss before income taxes and equity in undistributed loss of the Bank	(602)	(257)
Equity in undistributed loss of the Bank	<u>(17,694)</u>	<u>(3,093)</u>
Net loss before taxes	(18,296)	(3,350)
Income tax	<u>—</u>	<u>—</u>
Net loss	<u>\$ (18,296)</u>	<u>\$ (3,350)</u>

Condensed Statements of Cash Flows
For the year ended December 31, 2009 and December 31, 2008
(dollars in thousands)

	2009	2008
Cash flows from operating activities		
Net loss	\$ (18,296)	\$ (3,350)
Adjustments to reconcile net loss to net cash used in by operating activities:		
Increase in other assets	(59)	(90)
Stock based compensation	64	58
Equity in undistributed loss of the Bank	19,319	2,754
Change in accumulated other comprehensive income	(1,625)	339
Increase (decrease) in other liabilities	(5)	119
Net cash used in operating activities	(602)	(160)
Cash flows from investing activities		
Investments in Bank subsidiary	(500)	(2,800)
Net cash used in investing activities	(500)	(2,800)
Cash flows from financing activities		
Subordinated debt issue	—	4,325
Increase (decrease) in other borrowings	(1,570)	1,570
Net cash provided by (used in) financing activities	(1,570)	5,895
Net increase (decrease) in cash	(2,672)	2,935
Cash, beginning of year	3,029	94
Cash, end of year	\$ 357	\$ 3,029

NOTE 26 — SUBSEQUENT EVENTS

The Bank has evaluated events and transactions through the filing date for potential recognition or disclosure in the consolidated financial statements and has determined there are no subsequent events to disclose.

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.

None

Item 9A. Controls and Procedures.

As of the end of the period covered by this report, we carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of our disclosure controls and procedures as defined in Exchange Act Rule 13a-15(e). Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that our current disclosure controls and procedures are effective as of December 31, 2009. There have been no significant changes in our internal controls over financial reporting during the fourth fiscal quarter ended December 31, 2009 that have materially affected, or are reasonably likely to materially affect, our internal controls over financial reporting.

The design of any system of controls and procedures is based in part upon certain assumptions about the likelihood of future events. There can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions, regardless of how remote.

Management's Report on Internal Controls Over Financial Reporting

Management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in the Exchange Act Rules 13a-15(f). A system of internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.

Under the supervision and with the participation of management, including the principal executive officer and the principal financial officer, the Company's management has evaluated the effectiveness of its internal control over financial reporting as of December 31, 2009 based on the criteria established in a report entitled "Internal Control - Integrated Framework" issued by the Committee of Sponsoring Organizations of the Treadway Commission" and the interpretive guidance issued by the Commission in Release No. 34-55929. Based on this evaluation, the Company's management has evaluated and concluded that the Company's internal control over financial reporting was effective as of December 31, 2009.

The Company is continuously seeking to improve the efficiency and effectiveness of its operations and of its internal controls. This results in modifications to its processes throughout the Company. However, there has been no change in its internal control over financial reporting that occurred during the Company's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

This annual report does not include an attestation report of the Company's independent registered public accounting firm regarding internal control over financial reporting. The Company's registered public accounting firm was not required to issue an attestation on its internal controls over financial reporting pursuant to temporary rules of the SEC.

Part III

Item 10. Directors, Executive Officers and Corporate Governance.

The information required by Item 10 is hereby incorporated by reference from our proxy statement for our 2010 annual meeting of shareholders to be held on May 18, 2010.

Item 11. Executive Compensation.

The information required by Item 11 is hereby incorporated by reference from our proxy statement for our 2010 annual meeting of shareholders to be held on May 18, 2010.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.

The information required by Item 12 is hereby incorporated by reference from our proxy statement for our 2010 annual meeting of shareholders to be held on May 18, 2010.

Item 13. Certain Relationships and Related Transactions, and Director Independence.

The information required by Item 13 is hereby incorporated by reference from our proxy statement for our 2010 annual meeting of shareholders to be held on May 18, 2010.

Item 14. Principal Accountant Fees and Services.

The information required by Item 14 is hereby incorporated by reference from our proxy statement for our 2010 annual meeting of shareholders to be held on May 18, 2010.

Item 15. Exhibits.

- 3.1. Articles of Incorporation (incorporated by reference to Exhibit 3.1 of the Company's Form SB-2, File No. 333-117053).
- 3.2. Bylaws (incorporated by reference to Exhibit 3.2 of the Company's Form SB-2, File No. 333-117053).
- 3.3. Articles of Amendment to the Articles of Incorporation (incorporated by reference to Exhibit 3.1 of the Company's Form 8-K filed November 23, 2009).
- 4.1. See Exhibits 3.1, 3.2 and 3.3 for provisions in CommunitySouth Bancshares, Inc.'s Articles of Incorporation and Bylaws defining the rights of holders of the common stock (incorporated by reference to Exhibit 4.1 of the Company's Form SB-2, File No. 333-117053).
- 4.2. Form of certificate of common stock (incorporated by reference to Exhibit 4.2 of the Company's Form SB-2, File No. 333-117053).
- 10.1. Form of Stock Warrant Agreement (incorporated by reference to Exhibit 10.1 of the Company's Form 10-QSB filed on August 15, 2005).*
- 10.2. Master Loan Purchase Agreement between Bank of Tennessee and CommunitySouth Bank and Trust (incorporated by reference to Exhibit 10.6 of the Company's Form SB-2, File No. 333-117053).
- 10.3. Commercial Loan Agreement between Nexity Bank and Community Bancshares, Inc. dated July 26, 2004 (incorporated by reference to Exhibit 10.9 of the Company's Form SB-2, File No. 333-117053).
- 10.4. Option and Agreement of Sale dated August 18, 2004 by and between CommunitySouth Bancshares, Inc. and Daniel E. Youngblood (incorporated by reference to Exhibit 10.10 of the Company's Form SB-2 as, File No. 333-117053).
- 10.5. Ground Lease Agreement dated August 18, 2004 by and between CommunitySouth Bancshares, Inc. and Daniel E. Youngblood (incorporated by reference to Exhibit 10.11 of the Company's Form SB-2, File No. 333-117053).
- 10.6. CommunitySouth Bancshares, Inc. 2005 Stock Incentive Plan and Form of Option Agreement (incorporated by reference to Exhibit 10.9 of the Company's Form 10-KSB for the year ended December 31, 2004).*
- 10.7. Standard Form of Design-Build Agreement and General Conditions between CommunitySouth Bancshares, Inc. and Trehel Corporation dated August 3, 2005 (incorporated by reference to Exhibit 10.1 of the Company's Form 10-QSB filed on November 14, 2005).
- 10.8. Employment Agreement by and between C. Allan Ducker III and CommunitySouth Financial Corporation dated December 31, 2008 (incorporated by reference to Exhibit 10.1 of the Company's Form 8-K filed January 5, 2009).*
- 10.9. Employment Agreement by and between David A. Miller and CommunitySouth Financial Corporation dated December 31, 2008 (incorporated by reference to Exhibit 10.2 of the Company's Form 8-K filed January 5, 2009).*
- 10.10. Employment Agreement by and between John W. Hobbs and CommunitySouth Financial Corporation dated December 31, 2008 (incorporated by reference to Exhibit 10.3 of the Company's Form 8-K filed January 5, 2009).*

- 10.11 Amendment No. 1 to the CommunitySouth Bancshares, Inc. 2005 Stock Incentive Plan and Form of Option Agreement, adopted November 18, 2008 (incorporated by reference as Exhibit 10.11 to the Company's Form 10-K filed March 30, 2009).*
- 10.12 Subordinated Note Purchase Agreement, dated August 22, 2008 (incorporated by reference as Exhibit 10.1 to the Company's Form 8-K filed August 28, 2008).*
- 10.13 Form of CommunitySouth Financial Corporation 11.5% Subordinated Note Due 2018 (incorporated by reference as Exhibit 10.2 to the Company's Form 8-K filed August 28, 2008).*
- 10.14 Consent Order with the FDIC and the South Carolina Board of Financial Institutions dated February 23, 2010.
- 21.1 Subsidiaries of the Company.
- 23.1 Consent of Elliott Davis, LLC
- 24.1 Power of Attorney (filed as part of the signature page herewith).
- 31.1 Rule 13a-14(a) Certification of the Chief Executive Officer.
- 31.2 Rule 13a-14(a) Certification of the Chief Financial Officer.
- 32 Section 1350 Certifications.

* Management contract of compensatory plan or arrangement required to be filed as an Exhibit to this Annual Report on Form 10-K.

If you wish to receive a paper copy of any exhibit to our reports filed with or furnished to the SEC, the exhibit may be obtained, upon payment of reasonable expenses, by writing to: CommunitySouth Financial Corporation, Attn: John W. Hobbs, Chief Financial Officer, 6602 Calhoun Memorial Highway, Easley, South Carolina 29640.

SIGNATURES

In accordance with Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

COMMUNITYSOUTH FINANCIAL CORPORATION

Date: February 26, 2010

By: /s/ C. Allan Ducker, III

C. Allan Ducker, III
Chief Executive Officer

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints C. Allan Ducker, III, his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments to this Annual Report on Form 10-K, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite or necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that attorney-in-fact and agent, or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

In accordance with the Exchange Act, this report has been signed below by the following persons on behalf of the registrant in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ David Larry Brotherton</u> David Larry Brotherton	Director	February 26, 2010
<u>/s/ G. Dial DuBose</u> G. Dial DuBose	Director	February 26, 2010
<u>/s/ C. Allan Ducker, III</u> C. Allan Ducker, III	Chief Executive Officer, Director	February 26, 2010
<u>/s/ David W. Edwards</u> David W. Edwards	Director	February 26, 2010
<u>/s/ R. Wesley Hammond</u> R. Wesley Hammond	Director	February 26, 2010
<u>/s/ David A. Miller</u> David A. Miller	President, Director	February 26, 2010
<u>/s/ John W. Hobbs</u> John W. Hobbs	Chief Financial Officer and Principal Accounting Officer, Director	February 26, 2010
<u>/s/ W. Michael Riddle</u> W. Michael Riddle	Director	February 26, 2010
<u>/s/ Joanne M. Rogers</u> Joanne M. Rogers	Director	February 26, 2010

<u>/s/ B. Lynn Spencer</u> B. Lynn Spencer	Director	February 26, 2010
<u>/s/ J. Neal Workman, Jr.</u> Neal Workman, Jr.	Director	February 26, 2010
<u>/s/ Daniel E. Youngblood</u> Daniel E. Youngblood	Director	February 26, 2010

Exhibit Index

- 3.1. Articles of Incorporation (incorporated by reference to Exhibit 3.1 of the Company's Form SB-2, File No. 333-117053).
- 3.2. Bylaws (incorporated by reference to Exhibit 3.2 of the Company's Form SB-2, File No. 333-117053).
- 3.3. Articles of Amendment to the Articles of Incorporation (incorporated by reference to Exhibit 3.1 of the Company's Form 8-K filed November 23, 2009).
- 4.1. See Exhibits 3.1, 3.2 and 3.3 for provisions in CommunitySouth Bancshares, Inc.'s Articles of Incorporation and Bylaws defining the rights of holders of the common stock (incorporated by reference to Exhibit 4.1 of the Company's Form SB-2, File No. 333-117053).
- 4.2. Form of certificate of common stock (incorporated by reference to Exhibit 4.2 of the Company's Form SB-2, File No. 333-117053).
- 10.1. Form of Stock Warrant Agreement (incorporated by reference to Exhibit 10.1 of the Company's Form 10-QSB filed on August 15, 2005).*
- 10.2. Master Loan Purchase Agreement between Bank of Tennessee and CommunitySouth Bank and Trust (incorporated by reference to Exhibit 10.6 of the Company's Form SB-2, File No. 333-117053).
- 10.3. Commercial Loan Agreement between Nexity Bank and Community Bancshares, Inc. dated July 26, 2004 (incorporated by reference to Exhibit 10.9 of the Company's Form SB-2, File No. 333-117053).
- 10.4. Option and Agreement of Sale dated August 18, 2004 by and between CommunitySouth Bancshares, Inc. and Daniel E. Youngblood (incorporated by reference to Exhibit 10.10 of the Company's Form SB-2 as, File No. 333-117053).
- 10.5. Ground Lease Agreement dated August 18, 2004 by and between CommunitySouth Bancshares, Inc. and Daniel E. Youngblood (incorporated by reference to Exhibit 10.11 of the Company's Form SB-2, File No. 333-117053).
- 10.6. CommunitySouth Bancshares, Inc. 2005 Stock Incentive Plan and Form of Option Agreement (incorporated by reference to Exhibit 10.9 of the Company's Form 10-KSB for the year ended December 31, 2004).*
- 10.7. Standard Form of Design-Build Agreement and General Conditions between CommunitySouth Bancshares, Inc. and Trehel Corporation dated August 3, 2005 (incorporated by reference to Exhibit 10.1 of the Company's Form 10-QSB filed on November 14, 2005).
- 10.8. Employment Agreement by and between C. Allan Ducker III and CommunitySouth Financial Corporation dated December 31, 2008 (incorporated by reference to Exhibit 10.1 of the Company's Form 8-K filed January 5, 2009).*
- 10.9. Employment Agreement by and between David A. Miller and CommunitySouth Financial Corporation dated December 31, 2008 (incorporated by reference to Exhibit 10.2 of the Company's Form 8-K filed January 5, 2009).*
- 10.10. Employment Agreement by and between John W. Hobbs and CommunitySouth Financial Corporation dated December 31, 2008 (incorporated by reference to Exhibit 10.3 of the Company's Form 8-K filed January 5, 2009).*
- 10.11. Amendment No. 1 to the CommunitySouth Bancshares, Inc. 2005 Stock Incentive Plan and Form of Option Agreement, adopted November 18, 2008 (incorporated by reference as Exhibit 10.11 to the Company's Form 10-K filed March 30, 2009).*

- 10.12 Subordinated Note Purchase Agreement, dated August 22, 2008 (incorporated by reference as Exhibit 10.1 to the Company's Form 8-K filed August 28, 2008).*
- 10.13 Form of CommunitySouth Financial Corporation 11.5% Subordinated Note Due 2018 (incorporated by reference as Exhibit 10.2 to the Company's Form 8-K filed August 28, 2008).*
- 10.14 Consent Order with the FDIC and the South Carolina Board of Financial Institutions dated February 23, 2010.
- 21.1 Subsidiaries of the Company.
- 23.1 Consent of Elliot Davis, LLC
- 24.1. Power of Attorney (filed as part of the signature page herewith).
- 31.1 Rule 13a-14(a) Certification of the Chief Executive Officer.
- 31.2 Rule 13a-14(a) Certification of the Chief Financial Officer.
- 32 Section 1350 Certifications.

* Management contract of compensatory plan or arrangement required to be filed as an Exhibit to this Annual Report on Form 10-K.

[Home](#)[Corporate Profile](#)[Officers & Directors](#)[Committee Charting](#)[Stock Information](#)[Total Return Calculator](#)[Historic Prices](#)[Dividends](#)[Basis Calculator](#)[Market Makers](#)[Press Releases](#)[Branch Locator](#)[SEC Filings](#)[Insider Filings](#)[Insider Transactions](#)[Financial Documents](#)[Financial Highlights](#)[Peer Analysis](#)[Deposit Marketshare](#)[Presentations](#)[Event Calendar](#)[Email Notification](#)[Information Request](#)[FAQ](#)[Contact Us](#)

Officers & Directors

Click on a person's name or image to view his or her biography.



[Expand All](#)

Executive Management



C. Allan Ducker III
Chief Executive Officer



John W. Hobbs
Chief Financial Officer

Board of Directors



D. Larry Brotherton
Chairman



Dave Edwards
Vice Chairman



G. Dial DuBose



C. Allan Ducker III



R. Wesley Hammond



John W. Hobbs



W. Michael Riddle



Joanne M. Rogers



B. Lynn Spencer



J. Neal Workman Jr.



Danny Youngblood

Copyright 2010, © [SNL Financial LC](#) [Terms of Use](#)

Tuesday, April 13, 2010

GSA BUSINESS

THE BUSINESS JOURNAL FOR GREENVILLE, SPARTANBURG & ANDERSON

Search:

- [HOME](#)
- [NEWS](#)
- [COMMUNITY](#)
 - [SUBSCRIPTIONS](#)
 - [EVENTS](#)
 - [JOBS](#)
 - [RESOURCES](#)
 - [ADVERTISE](#)
 - [RSS](#)

[Contact Us](#)[About Us](#)[Need Help?](#)[Got News?](#)

He doesn't offer his patients one kind of treatment.

[ShareThis](#)

FDIC takes closer look at S.C. banks



by Scott Miller

smiller@scbiznews.com

The Federal Deposit Insurance Corp. has pressured one Upstate bank to improve its capital position; another bank expects such an order is coming.

Following bank examinations in the fourth quarter, the FDIC has become more involved in a state that has not yet had a bank fail during the recession.

Greenville-based Palmetto Bancshares Inc. said in a filing with Securities and Exchange Commission this month that it expects to receive a written agreement from the FDIC to improve its capital position. The holding company for Palmetto Bank lost \$40 million last year and is no longer considered "well capitalized" by federal regulators.

Easley-based CommunitySouth Financial Corp. faces a more pressing situation. The bank is considered "under capitalized," and FDIC has already gotten involved. In mid-February, CommunitySouth entered into a consent order with the FDIC and the South Carolina Board of Financial Institutions that placed restrictions on the bank's liquidity. CommunitySouth must raise capital quickly.

Also in the fourth quarter, Tidelands Bancshares Inc. based in Mount Pleasant entered into an informal memorandum of understanding with the FDIC, and Beach First National Bancshares Inc. of Myrtle Beach signed a consent order with the Office of the Comptroller of the Currency.

Banks that fail to meet FDIC directives could be placed in federal receivership. In the fourth quarter, 45 institutions failed, bringing the total number of failures for the year to 140, the highest annual total since 1992. Additionally, the FDIC said its "problem list" increased from 552 institutions at Sept. 30 to 702 at the end of the year.

"When you get a consent order, you're circling the drain," said Steven Mann, a finance professor at the Moore School of Business at the University of South Carolina.

That doesn't mean those banks are destined to fail, he said, but some will because they must compete for a limited amount of capital.

"At what price can they raise capital? When you're circling the drain, the cost of capital gets a lot more expensive," Mann said. "It becomes such that you have to pay so much for the capital that it won't be worth it to stay in business."

Adequately capitalized

Palmetto Bank has not received a consent order.

And a successful capital campaign could be conducted before the FDIC takes action, said Palmetto Bank President and CEO Sam Erwin.

"With that 10-K (annual report), we probably went a little more forward looking so that our investors are aware of what's out there," he said.

He also said that regardless of a potential FDIC order, the Palmetto Bank has been considering options to improve its capital position.

"Clearly we've been working very hard on that for a long time," he said. "We don't expect anything different from that (potential FDIC agreement) that we haven't already been working on."

Erwin noted that the bank's quarterly earnings statements showed improvement each of the last two quarters. The company reported a \$10.1 million loss for the fourth quarter, after losing \$14.2 million and \$17.9 million in the third and second quarters respectively.

"What we're looking for is stability in our loan portfolio," he said.

The company's Tier 1 leverage ratio and Tier 1 risk-based capital ratios remain above the well-capitalized regulatory minimum thresholds of 5% and 6% respectively. The company's total risk-based capital ratio, however, was below the 10% threshold at 8.25%. If that falls below 8%, the bank could hit "under capitalized" status.

Under capitalized

But Palmetto Bank has time. In April 2009, Spartanburg-based First National Bancshares Inc. signed an agreement with the OCC to improve its capital position. First National, the holding company for First National Bank of the South, continues its efforts to that end and has received extensions from regulators on that agreement.

Greer Bancshares Inc. pulled itself from adequately capitalized status to well capitalized last year by taking advantage of the federal government's TARP program. The company did so before the FDIC or any other federal regulator got involved.

Unlike these Upstate banks, CommunitySouth is under capitalized. The bank had already signed a memorandum of understanding with the FDIC last year. Now it has a consent order.

"The items in the consent order aren't a surprise and they aren't anything that our current plan hasn't been trying to address," said bank CEO Allan Ducker III.

"It's not an overnight process," he said of healing process.

The bank lost \$18.3 million last year. Much of that occurred in the fourth quarter, when the bank recorded a \$10.7 million provision for loan losses as struggles with commercial real estate.

"We recognized potential exposure in the portfolio very expediently. This is not something that came out and blindsided us," Ducker said.

"We are in the process of filing the documentation to raise capital and the near-term we plan to raise capital in the most effective way and that could include some kind of stock sale," Ducker said, noting that the company expects to remain independent.

Diluted value

While Ducker downplayed the significance, consent orders of this sort aren't common, said Bill McAfee, president and chief investment officer of WHM Capital Advisors, a wealth management firm in Columbia.


"The fact that those types of actions are taking place is a sign that South Carolina's banking climate is a concern," he said.


After analyzing the assets and return on equity of community banks statewide, WHM predicted that three community banks in the Palmetto State will fail in the next two years.

Shareholders, meanwhile, could lose a lot as banks try to raise capital to stay open. Banks with written orders from FDIC are risky propositions to investors. That will make any capital costly and will dilute the value to current shareholders, he said.

"But if you don't raise the capital required, your options just go downhill from there," McAfee added. "Dilution beats going out of business."

Answering questions
you haven't
even thought
of yet.



 **elliott davis**

NAI Earle Furman, LLC
Follow Commercial
Real Estate on
Twitter!
twitter.com/naiearlefurman



Greenville
FIRST

Space above this line for recording information

2nd. Book
P.O. Blk 1633
Deerwood, SC
29633

STATE OF SOUTH CAROLINA

TITLE TO REAL ESTATE

COUNTY OF OCONEE

UI0344
1000

KNOW ALL MEN BY THESE PRESENTS THAT, WP PROPERTIES OF CLEMSON, LLC, a DELWARE LIMITED LIABILITY COMPANY herein referred to as Grantors, for and in consideration of the sum of TWELVE MILLION SIX HUNDRED THOUSAND AND 00/100 (\$12,600,000.00) Dollars paid by POINTE WEST, INC., a SOUTH CAROLINA CORPORATION hereinafter referred to as Grantees, in the State aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto:

POINTE WEST, INC., A SOUTH CAROLINA CORPORATION,
Its successors, and assigns forever.

See Attached Exhibit A

This is the same property conveyed unto the Grantors herein by deed from Westcott Stevens, Inc., Successor by merger to West Point -Pepperell, Inc. dated 6/28/06 and recorded 7/16/06 in the Office of the Oconee County Register of Deeds in Deed Book 1515 at Page 117.

This conveyance is made subject to Easements, Restrictions, Covenants, and Conditions of record, including matters shown on recorded plats and also the matters shown on Exhibit B attached too.

Grantees Address: 591 College Avenue, Suite 508
Clemson, SC 29631

Recorded this 20 day of Dec.
Book 2007 Page 15886
Fee

Tax/Map No. 271-00-01-01 & 002

Glenda R. Nip
Auditor Oconee County, S.C.

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining. TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantees, Its successors and assigns forever. Grantor will warrant and forever defend the right and title to the above described property unto Grantee against the lawful claims of all persons claiming by, through or under Grantor, but not otherwise.

THIS PROPERTY DESIGNATED AS
MAP 271 SUB 00 BLK 01 PARC 061
ON OCONEE COUNTY TAX MAPS 271-00-01-002

Leethi Smith
OCONEE COUNTY ASSESSOR

OCONEE COUNTY
STATE TAX 32760.00
COUNTY TAX 13960.00
EXEMPT.

FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS
2007 DEC 19 P 3 53

WITNESS my Hand and Seal this ____ day of December, 2007.

Signed, Sealed and Delivered
in the Presence of:

Kim Hilene
Witness #1

Clifton Covington
Witness #2/Notary

WP Properties of Clemson, LLC, a DELAWARE
LIMITED LIABILITY COMPANY

BY: Douglas Edlund
Its Duty Authorized Agent (SEAL)

STATE OF New York

COUNTY OF New York

PROBATE

Personally appeared before me the undersigned witness and made oath that (s)he saw the within named Grantors sign, seal and as its act and deed, deliver the within written Deed for the uses and purposes therein mentioned, and that (s)he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this
17 day of December, 2007.

Clifton Covington
Notary Public for the State of New York
My Commission Expires: May 21, 2011

Kim Hilene
Witness #1 to sign again



CLIFTON COVINGTON
Notary Public, State of New York
No. 01005192000
Qualified in New York County
Commission Expires May 21, 2011

2007 DEC 19 P 3 53

EXHIBIT A
LEGAL DESCRIPTION

COMMENCING at PK Nail set in the centerline intersections of Martin Creek Road (SC37-55) and J.P. Stevens Road (537-37), the Point of Commencement, and runs thence N31°45'17" W 94.77' to an iron rod found in the northern right of way line of J.P. Stevens Road, the Point of Beginning, thence with the western right of way line of J.P. Stevens Road N 10°07' 32" W 171.74' to a found rebar; thence continuing with said western right of way line of J.P. Stevens Road a curve to the right, the chord being N 01°15' 14" W 1415.50' to a rebar found in said western right of way line; thence continuing with said western right of way line of J.P. Stevens Road N 09°53' 32" E 669.49' to a rebar found in said western right of way line; thence N 39°32' 55" E 134.48' to a rebar found in the eastern right of way line of J.P. Stevens Road; thence S 75°05' 40" E 1088.95' to an iron rod found; thence S 58°14' 17" E 1532.67' to an iron pipe found; thence S 04°33' 20" E 294.47' to a concrete monument found; thence S 75°02' 41" E 271.36' to a concrete monument found; thence S 25°05' 24" W 792.22' to a concrete monument found; thence to, with, and along the edge of Lake Hartwell the following (34) calls, S 05°15' 45" E 878.73' to a concrete monument found; thence N 38°58' 27" W 379.80' to a concrete monument found; thence S 27°15' 48" W 258.92' to a concrete monument found; thence S 15°08' 00" W 239.00' to an iron pipe found; thence S 72°41' 34" E 355.41' to a concrete monument found; thence S 16°20' 39" W 125.41' to an iron rod set; thence S 05°42' 37" E 142.75' to an iron rod set; thence S 22°14' 35" E 167.39' to an iron rod set; thence S 06°43' 16" E 218.76' to an iron rod set; thence S 29°05' 34" E 93.57' to a concrete monument found; thence S 45°00' 31" W 242.92' to an iron pipe found; thence S 80°01' 07" W 99.34' to an iron pipe found; thence S 45°05' 16" W 659.06' to an iron pipe found; thence S 34°08' 11" W 305.26' to a concrete monument found; thence S 02° 48' 16" W 849.18' to a concrete monument found; thence S 27°04' 05" W 251.66' to a concrete monument found; thence N 37°42' 18" W 363.12' to an iron pipe found; thence N 58°25' 25" W 535.88' to a concrete monument found; thence N 54°05' 13" E 246.74' to a concrete monument found; thence N 29°04' 00" W 152.91' to a concrete monument found; thence S 90°32' 55" W 655.25' to a concrete monument found; thence N 30°35' 48" W 385.15' to a concrete monument found; thence N 40°55' 36" E 490.38' to an iron rod set; thence N 10°10' 44" W 257.52' to an iron rod set; thence S 60°09' 00" W 701.40' to a concrete monument found; thence S 26°33' 00" E 50.01' to a concrete monument found; thence S 56°13' 10" W 319.20' to a concrete monument found; thence N 26°40' 40" W 149.58' to a concrete monument found; thence N 85°40' 21" W 729.51' to a concrete monument found; thence N 14°28' 54" W 309.56' to a concrete monument found; thence North 15°24'52" E 1477.12' to a concrete monument found; thence North 46°05'12" E 256.44' to a concrete monument found; thence North 77°42'26" E 694.48' to an iron pipe found; thence North 63°12'03" W 513.80' to an iron pipe found in the northern right of way line of Martin Creek Road; thence with said northern right of way line of Martin Creek Road N 88°02' 30" E 585.87' to a rebar found in said northern right of way line; thence N 39°16' 33" E 65.51' to the point of beginning.

The above-described property is more fully shown on an ALTA Land Title Survey by Johnny W. Nobles dated August 23, 2001.

Plat Book B42 Pgs 1 thru 5

Together with the following:

Those certain easements, appurtenant to the land described above, described in that certain document entitled "Department of the Army, Easement for Rights-of-Way for Water Pumping Stations, Waste Pumping Station, Water, Sewer and Industrial Waste Pipelines, Access Road, Electrical Power and Control Lines, Waste Disposal System, Hartwell Reservoir, GA - S.C., No. DA-09-133-CIVENG-68-186," and shown on that certain plat entitled "Eas. 0.63-185, Outgrant Map, Hartwell Dam & Reservoir Project, A Portion of Segment *2** dated 2 July 1964, recorded in Volume P28, Page 292.

LESS AND EXCEPT THE FOLLOWING:

That certain lot or parcel of land described as "Parcel Z-2621-3" in that certain deed from J.P. Stevens & Co, Inc. recorded in Book 12-0, Page 219.

FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS

STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)
DECLARATION OF COVENANTS
AND RESTRICTIONS

BOOK 1674 PAGE 124
A 11: 26

Doc ID: 0035-0029007 Type: DEE
BK 1762 PG 179-185

THIS DECLARATION OF COVENANTS AND RESTRICTIONS (Declaration) is made and entered into this 22 day of February, 2010, by Highpointe, LLC a South Carolina Limited Liability Company (hereinafter referred to as Highpointe).

RECITALS

WHEREAS, Highpointe is the owner of certain real property in Oconee County, South Carolina, more particularly described in Exhibit A attached hereto and incorporated herein by reference ("Property"); and

WHEREAS, an approximately 6.39 acre Fly Ash Landfill located on the Northern Tract Property was closed in July 1996 pursuant to the WestPoint Stevens, Inc.'s (Facility ID #373317-1601) Department approved closure plan. On July 30, 2008, the Department transferred Post Closure Permit for South Carolina Industrial Waste Permit 135 (IWP-135) to Pointe West, Inc. The Post Closure care period for IWP-135 began on July 31, 1996 and will end on July 31, 2026, unless the Department deems otherwise.

WHEREAS, the Property is a portion of the Northern Tract Property subject to Voluntary Cleanup Contract 07-4995-NRP (VCC) entered into by the South Carolina Department of Health and Environmental Control and Pointe West, Inc. pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. § 44-58-710, et seq. (2002 & Supp. 2007), as amended on June 11, 2008, the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601, et seq., and the South Carolina Hazardous Waste Management Act (HWMA), S.C. Code Ann. § 44-58-200. The Property subject to the VCC was identified as approximately 113 acres north of Old Cherry Road, identified as Oconee County Tax Map Serial Number 271-00-01-001, and approximately 220 acres south of Old Cherry Road, identified as TMS #271-00-01-002. These parcels were referenced in the VCC as the "Northern Tract" and the "Southern Tract", respectively; and

WHEREAS, the terms and conditions of the VCC inure to new purchasers; and

WHEREAS, on December 18, 2007, Highpointe acquired approximately 112 acres of the Northern Tract Property located north of Old Cherry Road further identified as Oconee County Tax Map Serial Number 271-00-01-001 excepting the 1-acre newly identified TMS 271-00-01-005 parcel; and

WHEREAS, a Declaration of Covenants and Restrictions for the Property was recorded in Book 1674 at Page 120-124 by Oconee County on July 31, 2008; and

BOOK 1674 PAGE 124
A 11: 26

FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS

969696

3/19
Oliver
PO Box 1633
Clemson SC
29633

WHEREAS, Pointe West, Inc. was incorrectly identified as the "owner of certain real property..." in that Declaration of Covenants and Restrictions for the Property; and

WHEREAS, the Property may be used for certain purposes without further remediation in accordance with the conditions of the VCC and requires that certain restrictions are placed on development and use of the Property; however, neither the VCC nor this Declaration modify or waive any requirements of the Post Closure Permit for South Carolina IWP-135; and

WHEREAS, Highpointe has agreed to impose restrictions on the manner in which the Property may be developed (said restrictions to run with the land and inure to the benefit of and be enforceable by the Department and its successor agencies); and

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that Highpointe hereby declares and covenants on behalf of itself, its successors, and assigns that the Property described in Exhibit A shall be held, mortgaged, transferred, sold, conveyed, leased, occupied, and used subject to VCC 07-4895-NRP, executed December 13, 2007, to include the following restrictions, which shall touch and concern and run with the title to the Property.

1. Highpointe covenants for itself, its successors and assigns that the Property shall be used for open greenspace and that no temporary or permanent activities or structures that could jeopardize the integrity of the Fly Ash Landfill cap are allowed on the Property.
2. Highpointe covenants for itself, its successors and assigns that the Property will be maintained in accordance with a Department approved Post Closure Plan.
3. Highpointe covenants for itself, its successors and assigns that the Department or its successor agency, and all other parties performing response actions under the Department's oversight shall be provided reasonable access to inspect the property, to oversee the activities conducted on the property, or to take samples as may be necessary to enforce this Declaration.
4. The covenants and restrictions set forth herein shall run with the title to the Property and shall be binding upon Highpointe, its successors and assigns. Highpointe and its successors, and assigns shall include the following notice on all deeds, mortgages, plats, or any legal instruments used to convey any interest in the Property (failure to comply with this paragraph does not impair the validity or enforceability of these covenants):

NOTICE: This Property is Subject to Declaration of Covenants and Restrictions and any subsequent Amendments Recorded at Book 11274, Page 124

6. Highpointe, its successors and assigns shall submit to the Department's Voluntary Cleanup Program a statement of maintenance of the covenants and restrictions as set forth above annually by May 31st of every year.
7. This Declaration shall remain in place until such time as the Department has made a written determination that the covenants and restrictions set forth herein are no longer necessary. This Declaration shall not be amended without the written consent of the Department or its successor agency.
8. This Declaration only applies to the Property expressly identified in Exhibit A and does not impair the Department's authority with respect to the Property or other real property under the control of Highpointe.

IN WITNESS WHEREOF, HIGHPOINTE, LLC has caused this instrument to be executed as of the date first above written.

WITNESSES:

Jill Crandall
[Signature]

HIGHPOINTE, LLC
A South Carolina Limited Liability Company

By: [Signature]
Tom Winkopp
Name, Managing Member

STATE OF South Carolina)
COUNTY OF Pickens)

Acknowledgement

I, Samantha Gilbert (Notary Public), do hereby certify
that, Tom Winkopp an authorized representative of
HIGHPOINTE, LLC, personally appeared before me this day and acknowledged the
due execution of the foregoing instrument, on behalf of HIGHPOINTE, LLC.

Witness my hand and official seal this 20th day of January 2010

Samantha Gilbert
Notary Public for:

My Commission Expires: 2/5/14



IN WITNESS WHEREOF, the Department has caused this instrument to be executed as of the date first above written.

South Carolina Department of Health and Environmental Control

By: Daphne G. Neel
Daphne G. Neel, Chief

Bureau of Land and Waste Management

Environmental Quality Control

South Carolina Department of Health and Environmental Control

WITNESSES:

Lavinia K. Dieth
Paul W. Mann

STATE OF SOUTH CAROLINA

)
)
)

Acknowledgement

COUNTY OF RICHLAND

I, Virginia F. Kennedy (Notary Public), do hereby certify

that, Daphne G. Neel, Chief, Bureau of Land and Waste Management, Environmental Quality Control of the South Carolina Department of Health and Environmental Control, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 22nd day of February 2016

Virginia F. Kennedy
Notary Public for: South Carolina

My Commission Expires: My Commission Expires April 3, 2017



EXHIBIT A

All that certain piece, parcel or tract of land, lying and being situate in the State of South Carolina, County of Oconee, being shown and designated as Ash Landfill Area, containing 6.39 acres, more or less, according to plat prepared for High Pointe, LLC by Earl B. O'Brien, RLS No. 0755, of Nu-South Surveying, Inc., dated March 13, 2008, and revised July 23, 2008, recorded in Plat Book B277, Page 2 & 3 records of Oconee County, South Carolina, reference to which plat is hereby made for a more complete and accurate description.

This being part of the same property conveyed to High Pointe, LLC by deed of Pointe West, Inc. dated December 18, 2007 and recorded in Deed Book 1634, Page 269, records of Oconee County, South Carolina.



THIS IS A PLAN OF THE CAMPUS
 SHOWING THE BUILDINGS AND
 COURTYARD. THE PLAN IS
 TO BE USED FOR THE PURPOSES
 OF THE SCHOOL.

THE CAMPUS IS LOCATED AT
 THE CORNER OF 10th and
 11th Streets. The buildings
 are shown in solid lines and
 the courtyard in dashed lines.
 The scale is 1/4" = 10'.

Room No.	Room Name	Area (sq. ft.)
101	Classroom	100
102	Classroom	100
103	Classroom	100
104	Classroom	100
105	Classroom	100
106	Classroom	100
107	Classroom	100
108	Classroom	100
109	Classroom	100
110	Classroom	100
111	Classroom	100
112	Classroom	100
113	Classroom	100
114	Classroom	100
115	Classroom	100
116	Classroom	100
117	Classroom	100
118	Classroom	100
119	Classroom	100
120	Classroom	100
121	Classroom	100
122	Classroom	100
123	Classroom	100
124	Classroom	100
125	Classroom	100
126	Classroom	100
127	Classroom	100
128	Classroom	100
129	Classroom	100
130	Classroom	100
131	Classroom	100
132	Classroom	100
133	Classroom	100
134	Classroom	100
135	Classroom	100
136	Classroom	100
137	Classroom	100
138	Classroom	100
139	Classroom	100
140	Classroom	100
141	Classroom	100
142	Classroom	100
143	Classroom	100
144	Classroom	100
145	Classroom	100
146	Classroom	100
147	Classroom	100
148	Classroom	100
149	Classroom	100
150	Classroom	100
151	Classroom	100
152	Classroom	100
153	Classroom	100
154	Classroom	100
155	Classroom	100
156	Classroom	100
157	Classroom	100
158	Classroom	100
159	Classroom	100
160	Classroom	100
161	Classroom	100
162	Classroom	100
163	Classroom	100
164	Classroom	100
165	Classroom	100
166	Classroom	100
167	Classroom	100
168	Classroom	100
169	Classroom	100
170	Classroom	100
171	Classroom	100
172	Classroom	100
173	Classroom	100
174	Classroom	100
175	Classroom	100
176	Classroom	100
177	Classroom	100
178	Classroom	100
179	Classroom	100
180	Classroom	100
181	Classroom	100
182	Classroom	100
183	Classroom	100
184	Classroom	100
185	Classroom	100
186	Classroom	100
187	Classroom	100
188	Classroom	100
189	Classroom	100
190	Classroom	100
191	Classroom	100
192	Classroom	100
193	Classroom	100
194	Classroom	100
195	Classroom	100
196	Classroom	100
197	Classroom	100
198	Classroom	100
199	Classroom	100
200	Classroom	100

TITLE: CAMPUS PLAN
 DATE: 1950
 DRAWN BY: [Name]
 CHECKED BY: [Name]

FILED FOR RECORD
JOHNSON COUNTY, S.C.
REGISTER OF DEEDS

Doc ID: 00182080007 Type: MTO
BK 2550 PG 1-7
BB&T

STATE OF SOUTH CAROLINA
COUNTY OF JOHNSON

2007 DEC 19 P 3:54

MORTGAGE OF REAL ESTATE

THIS MORTGAGE, made this 18 day of December, 2007, by **POINTE WEST, INC.** (hereinafter referred to as "Mortgagor"), and granted and given to **BRANCH BANKING AND TRUST COMPANY** (hereinafter referred to as "Mortgagee"), a banking corporation organized and existing under the laws of the State of North Carolina, whose address is 4007 Clemens Blvd., Anderson, South Carolina 29621.

WHEREAS, Mortgagor is indebted to Mortgagee as evidenced by a certain promissory note dated of even date, executed in favor of Mortgagee in the principal sum of Four Million Five Hundred Thousand Dollars (\$4,500,000), and any renewals, extensions or modifications thereto, the terms of which are incorporated herein by reference. Where used herein, the term "Note" or "Notes" shall be deemed to include the note above described, along with any other notes, additional advance agreements, or other documents now or hereafter evidencing any debt whatsoever incurred by Mortgagor and payable to Mortgagee.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that the Mortgagor, for and in consideration of the aforesaid indebtedness and in order to secure the payment thereof together with any renewals or extensions or modifications thereof, and also to secure it in accordance with § 25-3-30, As Amended, of the Code of Laws of South Carolina (1976) or any such successor statute as may apply:

1. All future advances and reimbursements that may subsequently be made to the Mortgagor evidenced by the Note(s) and by all renewals and extensions thereof; and

2. All other indebtedness of Mortgagor to Mortgagee, now or hereafter existing, whether direct or indirect, the maximum amount of all indebtedness outstanding at any one time secured hereby not to exceed \$5,000,000 plus interest thereon, all charges and expenses of collection incurred by Mortgagee including Court costs and reasonable attorney's fees, has granted, bargained, sold, assigned, released and does by these presents grant, bargain, sell, assign and release unto the Mortgagee, its successors and assigns the following described property:

See Exhibit A attached hereto and incorporated herein by reference.

Together with all and singular improvements thereon and the rights, tenures, benefactors and appurtenances to the same belonging or in any way appertaining; all the rents, issues, and profits thereof (provided, however that, unless otherwise agreed, the Mortgagor shall be entitled to collect and retain the said rents, issues, and profits until default hereunder); and including all heating, plumbing, and lighting fixtures and equipment now or hereafter attached to or used in connection with the real estate herein described (herein collectively the "Property").

TO HAVE AND TO HOLD, all the said Property unto the Mortgagee, its successors and assigns forever.

The Mortgagor covenants that it is lawfully seized of the premises herein above described in fee simple absolute (or such other estate, if any, as is stated hereinbefore), that it has good, right, and lawful authority to sell, convey, or encumber the same, and that the premises are free and clear of all liens and encumbrances whatsoever except as listed in the title opinion or title insurance policy which Mortgagee has obtained in the transaction in which Mortgagee obtained this Mortgage. The Mortgagor further covenants to warrant and forever defend title to the premises herein conveyed unto the Mortgagee, from and against all persons whatsoever lawfully claiming the same or any part thereof.

13.00
copy: Susan
PO Box 1433
Charmain DC
29623
010345

The Mortgagee covenants and agrees as follows:

1. That if it is a maker or obligor on the Note(s), it will promptly pay the principal and interest on the indebtedness evidenced by the said Note(s) and any subsequent note or agreement evidencing additional advances, at the time and in the manner therein provided. Mortgagor shall timely pay and perform any obligation, covenant or warranty contained not only in this mortgage but also any other mortgage, or writing which gives rise to, or which may constitute a lien upon any of the Property. Upon request of Mortgagee, Mortgagor promptly shall furnish satisfactory evidence of such payment or performance. Mortgagee shall not enter into, terminate, cancel or amend any material lease or contract affecting the Property or any part thereof without the prior written consent of the Mortgagee.
2. That the lien of this instrument shall remain in full force and effect during any postponement or extension of the time of payment of or any other modification relating to the indebtedness or any part thereof secured hereby.
3. That it will pay as they become due all mortgage loan insurance premiums, taxes, assessments, water rates, and other governmental or municipal charges, fees or impositions, assessed against the property hereby mortgaged. If the Mortgagee fails to make any payments provided for in this section or any other payments for taxes, assessments, or the like, the Mortgagee may pay the same, and all sums so paid shall bear interest at the same rate as the principal debt secured hereby (from the date of such advance) and shall be secured by this mortgage. Any award for the taking of, or damage to, all or any part of the Property or any interest therein upon the lawful exercise of the power of eminent domain shall be payable solely to Mortgagee, which may apply the moneys so received to payment of the Debt.
4. That it will keep the Property in as good order and condition as it is now, reasonable wear and tear excepted, and will not consent or permit any waste thereof. Mortgagee may at any reasonable time and from time to time make or cause to be made reasonable entries upon, investigations, and inspections of the Property, including without limitation any inspections or investigations such as sampling and testing which may be necessary or desirable to review compliance with Environmental Laws.
5. That it will produce and continuously maintain fire and such other hazard insurances as the Mortgagee may require on the improvements which form a part of the Property, now or hereafter on the Property, and will pay promptly when due any premiums therefor. If it fails to do so, the Mortgagee may cause the same to be done and reimburse itself for such premiums and expenses, and the same shall be secured by this mortgage. All insurances shall be carried in companies approved by the Mortgagee and the policies and renewals thereof shall be held by the Mortgagee and have attached thereto loss payable clauses (including New York long form) in favor of and in form acceptable to the Mortgagee. In event of loss, Mortgagee will give immediate notice by mail to the Mortgagee, who may make proof of loss if not made promptly by the Mortgagee, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to the Mortgagee and Mortgagee jointly, and the insurance proceeds, or any part thereof, may be applied by the Mortgagee at its option either to the reduction of the indebtedness hereby secured or to the restoration of the property damaged.
6. That it hereby assigns all the rents, issues, and profits of its Property from and after any default hereunder, and should legal proceedings be instituted pursuant to this instrument, then the Mortgagee shall have the right to have appointed a receiver of the rents, issues, and profits, who, after deducting all charges and expenses attending such proceedings and the execution of his trust as receiver, shall apply the residue of the rents, issues, and profits toward the payment of the debt secured hereby. Mortgagee hereby appoints Mortgagee as Mortgagor's attorney-in-fact to collect any rents and profits, with or without suit, and to apply the same, less expenses of collection to any indebtedness owing under the Note(s) in any manner as Mortgagee may desire. All the fixtures and equipment that comprise a part of the Property shall, as far as permitted by law, be deemed to be affixed to the aforesaid land and conveyed therewith. As to the balance of the fixtures, this Mortgage shall be considered to be a security agreement that creates a secured party under the South Carolina Uniform Commercial Code. Mortgagor hereby authorizes Mortgagee to file all UCC Financing Statements and other documents reasonably required to perfect and maintain the security interest created hereby. However, to the extent allowed by law, this Mortgage shall be a financing statement sufficient to perfect and maintain any security interest created hereby in the Property and its proceeds.
7. That it will pay as they become due the principal and interest on all notes, obligations, contracts or agreements, secured by any mortgage, lien, or security interest having priority over this mortgage as to the Property described herein. If the Mortgagee fails to make any of the payments as provided in this section, Mortgagee may pay the same and add any amounts so paid to the principal debt, and all sums so paid shall bear interest at the same rate as the principal debt secured hereby and shall be secured by this mortgage.
8. Mortgagor for itself, its successors, and assigns represents, warrants and agrees that (a) neither Mortgagor nor any other person has used or installed any Hazardous Materials (as hereinafter defined) on the Property or received any notice from any governmental agency, entity or other person with regard to Hazardous Materials on, from or affecting the Property; (b)

neither Mortgagee or any other person has violated any applicable Environmental Laws (as hereinafter defined) relating to or affecting the Property; (c) the Property is presently in compliance with all Environmental Laws, there are no circumstances presently existing upon or under the Property, or relating to the Property which may violate any applicable Environmental Laws, and there is no now pending, or threatened, any action, suit, investigation or proceeding against Mortgagee relating to the Property (or against any other party relating to the Property) seeking to enforce any right or remedy under any of the Environmental Laws; (d) the Property shall be kept free of Hazardous Materials, and shall not be used to generate, manufacture, transport, store, store, handle, dispose, or process Hazardous Materials; (e) Mortgagee shall not cause or permit the installation of Hazardous Materials in the Property nor a release of Hazardous Material onto or from the Property or suffer the presence of Hazardous Materials on the Property; (f) Mortgagee shall at all times comply with and ensure compliance by all other parties with all applicable Environmental Laws relating to or affecting the Property and shall keep the Property free and clear of any liens imposed pursuant to any applicable Environmental Laws; (g) the Mortgagee has obtained and will at all times continue to obtain and/or maintain all licenses, permits and/or other governmental or regulatory actions necessary to comply with Environmental Laws (the "Permits") and the Mortgagee is in full compliance with the terms and provisions of the Permits and will continue to comply with the terms and provisions of the Permits; (h) Mortgagee shall immediately give the Beneficiary oral and written notice in the event that Mortgagee receives any notice from any governmental agency, entity, or any other party with regard to Hazardous Materials or, from or affecting the Property and shall conduct and complete all investigations, sampling, and testing, and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials on, from or affecting the Property in accordance with all applicable Environmental Laws. The Mortgagee hereby agrees to indemnify the Mortgagee and hold the Mortgagee harmless from and against any and all losses, liabilities, damages, injuries (including, without limitation, attorneys' fees) and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against Mortgagee or, with respect to, or as a direct or indirect result of (a) the presence, on, or under, or the escape, spillage, emission or release from the Property of any Hazardous Material regardless of whether or not caused by or within the control of Mortgagee, (b) the violation of any Environmental Laws relating to or affecting the Property, whether or not caused by or within the control of Mortgagee, (c) the failure by Mortgagee to comply fully with the terms and provisions of this paragraph, or (d) any warranty or representation made by Mortgagee in this paragraph being false or untrue in any material respect. For purposes of this Mortgage, "Hazardous Materials" means and includes petroleum products, any flammable explosives, radioactive materials, asbestos or any material containing asbestos, and/or any hazardous, toxic or dangerous waste, substance or material defined as such in (or for the purposes of) the Environmental Laws. For the purpose of this Mortgage, "Environmental Laws" means the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, any "Super Fund" or "Super Lien" law, or any other federal, state, or local law, regulation, or decree regulating, relating to, or imposing liability or standards of conduct concerning any petroleum products, any flammable explosives, radioactive materials, asbestos or any material containing asbestos, and/or any hazardous, toxic or dangerous waste, substance or material, as may now or at any time hereafter be in effect. The obligations and liabilities of Mortgagee under this paragraph shall survive the foreclosure of the Mortgage, the delivery of a deed in lieu of foreclosure, the cancellation or release of record of this Mortgage or the payment and cancellation of the Note; or if otherwise expressly permitted in writing by the Mortgagee, the sale or alienation of any part of the Property.

9. That in the event that Mortgagee shall default in its obligations under this Mortgage, the Notes or other Loan Documents, and Mortgagee employs an attorney to assist in the collection of the Debt or to enforce compliance of Mortgagee with any of the provisions of this Mortgage, the Notes or other Loan Documents or in the event Mortgagee shall become parties to any suit or legal proceeding (including any proceeding conducted before any United States Bankruptcy Court) concerning the Property, concerning the lien of this Mortgage, concerning collection of the Debt or concerning compliance by Mortgagee or other borrowers named herein with any of the provisions of this Mortgage, the Notes or other Loan Documents, Mortgagee shall pay Mortgagee's reasonable attorneys' fees and all of the costs that may be incurred, and such fees and costs shall be secured by this Mortgage and its payment enforced as if it were a part of the Debt. Mortgagee shall be liable for such attorneys' fees and costs whether or not any suit or proceeding is commenced.

10. That to the extent permitted by law, Mortgagee may grant releases at any time and from time to time of all or any portion of the Property (whether or not such releases are required by agreement among the parties) accessible to Mortgagee without notice to or the consent, approval or agreement of other parties and interests, including junior lienors and purchasers subject to the lien of this Mortgage, and such releases shall not impair in any manner the validity of or priority of this Mortgage on that portion of the Property remaining subject to this Mortgage, nor release Mortgagee from personal liability for the Debt. Notwithstanding the existence of any other security interests in the Property held by Mortgagee or by any other party, Mortgagee shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies available to Mortgagee, and Mortgagee shall further have the right to determine the order in which any or all portions of the Debt are satisfied from the proceeds realized upon the exercise of any remedy it has. Mortgagee, or any party who consents to this, or any party who has actual or constructive notice hereof, hereby waives any and all rights to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

11. That Mortgagee shall be in default under this mortgage upon the occurrence of any of the following:

(a) Default in the payment or performance of any of the obligations, or of any covenant or warranty, in this mortgage, in the Note(s) or other document executed in connection herewith by Mortgagor, or in any other note of Mortgagor to Mortgagee or any contract between Mortgagor and Mortgagee, or in any contract between any third party and Mortgagee made for the benefit of Mortgagor; or

(b) Any warranty, representation or statement made or furnished to Mortgagee by or on behalf of Mortgagor in connection with this transaction proving to have been false in any material respect when made or furnished; or

(c) Loss, theft, substantial damage, destruction to or of the Property, or the assertion or making of any levy, seizure, mechanic's or materialman's lien or attachment thereof or thereon; or

(d) Death, dissolution, liquidation of existence, insolvency, business failure, appointment of a Receiver for any part of the property of, assignment for the benefit of creditors by, filing of a bankruptcy petition by or against, or the inability to pay debts in the ordinary course of business of the Mortgagor or any co-maker, endorser, guarantor or surety for Mortgagor; or

(e) Failure of Mortgagor to maintain its existence in good standing; or

(f) Upon the entry of any monetary judgment of the assessment or filing of any tax lien against Mortgagor, or upon the issuance of any writ of garnishment or attachment against any property, debts due or rights of Mortgagor; or

(g) The sale (including sale by land contract upon delivery of possession), transfer or encumbrance of all or any part of the Property or any interest therein, or any change in the ownership or control of Mortgagor, without Mortgagee's prior written consent; or

(h) If Mortgagee should otherwise deem itself, its security interest, the Property or the indebtedness evidenced by the Note(s) unadequately secured; or should Mortgagee otherwise believe that the progress of payment or other performance is impaired.

10. It is agreed that the Mortgagor shall hold and enjoy the premises above conveyed until there is a default under this mortgage or in the Note(s) secured hereby. If there is a default in any of the terms, conditions or covenants of this mortgage or of any of the Note(s) secured hereby, then at the option of the Mortgagee, and without prior notice to the Mortgagor, all sums then owing by the Mortgagor or any other obligor on the Note(s) to the Mortgagee shall become immediately due and payable, the Mortgagee may in addition pursue all other rights and remedies available against any Mortgagor or other obligor under the Note(s) under applicable provisions of South Carolina Law and of any other law governing the Note(s). This mortgage shall remain as security for full payment of all indebtedness evidenced by the Note(s) and for performance of any obligation evidenced by the Note(s) or any document executed in connection therewith, notwithstanding the sale or release of any or all of the Property, the assumption by another party of Mortgagor's obligations under the Note(s) or this mortgage, the forbearance or extension of time or payment of the indebtedness evidenced by the Note(s) or any one of same or the release of any party who has assumed or incurred any obligation for the repayment of any indebtedness evidenced by the Note(s) and secured by this mortgage. None of the foregoing shall in any way affect the full force and effect of the lien of this mortgage or impair the Mortgagee's right to any other remedies against the Mortgagor or any other obligors under the Note(s). Any forbearance by the Mortgagee in exercising any right or remedy hereunder or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Mortgagor shall not be a waiver of Mortgagee's right to accelerate maturity of the indebtedness evidenced by the Note(s) secured hereby. Time is of the essence the payment or performance of any of the obligations, or of any covenant or warranty contained in this mortgage, or in any of the Note(s) or any other document related thereto.

11. Mortgagee understands that, upon default hereunder, along with other remedies set out herein and in the above referenced Note(s), the Mortgagee may foreclose upon the mortgaged premises and ask for a deficiency judgment pursuant to §25-3-650 of the South Carolina Code of Laws (1976). Mortgagee hereby expressly waives and relinquishes any appraisal rights which Mortgagor may have under §29-3-680 et seq., South Carolina Code of Laws (1976), as amended, and understands and agrees that a deficiency judgment, if pursued by Mortgagee, shall be determined by the highest priced bid at the judicial sale of the Property. In the event that Mortgagor voluntarily or otherwise shall become parties to any suit or legal proceeding involving the Property, it shall be saved harmless and shall be reimbursed by Mortgagor for any amounts paid, including all costs, charges and attorney's fees incurred in any such suit or proceeding, and the same shall be secured by this mortgage and payable upon demand.

12. The covenants herein contained shall bind, and the benefits and advantages shall inure to, the respective heirs, executors, administrators, successors, and assigns of the parties hereto. Whenever used, the singular number shall be applicable to all genders and the term "Mortgagor" shall include any payee of the indebtedness hereby secured or any transferee thereof whether by operation of law or otherwise. The liability of the Mortgagor hereunder shall, if more than one, be joint and several.


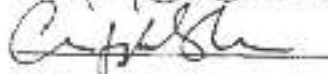
The designations "corporate", "corporation", and "partnership" include limited liability companies and limited liability partnerships.

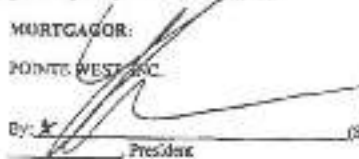
13. **WAIVER OF TRIAL BY JURY.** UNLESS EXPRESSLY PROHIBITED BY APPLICABLE LAW, THE UNDERSIGNED HEREBY WAIVES THE RIGHT TO TRIAL BY JURY OF ANY MATTERS OR CLAIMS ARISING OUT OF THIS MORTGAGE OR ANY LOAN DOCUMENT EXECUTED IN CONNECTION HERewith OR OUT OF THE CONDUCT OF THE RELATIONSHIP BETWEEN THE UNDERSIGNED AND MORTGAGEE. THIS PROVISION IS A MATERIAL INDUCEMENT FOR MORTGAGEE TO MAKE THE LOAN SECURED BY THIS MORTGAGE. FURTHER, THE UNDERSIGNED HEREBY CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF MORTGAGEE, NOR MORTGAGEE'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT MORTGAGEE WOULD NOT SEEK TO ENFORCE THIS WAIVER OR RIGHT TO JURY TRIAL PROVISION IN THE EVENT OF LITIGATION. NO REPRESENTATIVE OR AGENT OF MORTGAGEE, NOR MORTGAGEE'S COUNSEL, HAS THE AUTHORITY TO WAIVE, CONDITION OR MODIFY THIS PROVISION.

Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a default against which a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. TO THE FULLEST EXTENT PERMITTED BY LAW AND AS A MATERIAL INDUCEMENT FOR MORTGAGEE TO MAKE THE LOAN, MORTGAGOR HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.

IN WITNESS WHEREOF, each Mortgagor has executed this Mortgage the day and year first above written.

Signet sealed and delivered in the presence of:

 (SEAL)
 (SEAL)

MORTGAGOR:
POINTS WEST, INC.
By:  (SEAL)
President

STATE OF SOUTH CAROLINA

COUNTY OF Pickens

ACKNOWLEDGMENT

I, Mary D. Williams a notary public for South Carolina, do hereby certify that Thomas R. King, the President of Polaris West, Inc., a South Carolina corporation, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal (where an official seal is required by law) official seal this 18 day of Dec., 2007.

Mary D. Williams (Signature of Notary Public)
My Commission Expires: 2-29-2012

Thomas R. King (SEAL)

FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS

2007 DEC 19 P 354

EXHIBIT A

All that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Oconee, being known and designated as Tract Two (2) on a survey prepared by Johnny W. Nobles & Associates dated 10/12/05; last revised 12/22/05 and certified January 22, 2007 and recorded in Plat Book B242, pages 1 thru 8, records of Oconee County, South Carolina; and more fully described by the below metes and bounds description as follows:

COMMENCING at PK No. 1 set in the centerline intersection of Martin Creek Road (SC37-65) and J.P. Stevens Road (S37-37), the Point of Commencement, and run thence N 31 43' 17" W 94.77' to an iron rod found in the northern right of way line of J.P. Stevens Road, the Point of Beginning, thence with the western right of way line of J.P. Stevens Road N 10 07' 32" W 171.74' to a found iron rod; thence commencing with said western right of way line of J.P. Stevens Road of N 10 50' 08" W 66.48' to a computed point; thence a new line with the centerline of Old Cherry Road the following N 86 16' 15" E 1259.67' to a point, thence with said centerline N 84 51' 40" E 547.07' to a point, thence with said centerline N 86 15' 54" W 895.18' to a point, thence leaving said centerline S 25 05' 24" W 305.38' to a concrete monument found; thence S 05 15' 45" E 878.73' to a concrete monument found; thence N 38 58' 27" W 379.80' to a concrete monument found; thence S 27 15' 48" W 298.92' to a concrete monument found; thence S 15 08' 00" W 139.00' to an iron pipe found; thence S 72 41' 34" E 363.41' to a concrete monument found; thence S 18 20' 39" W 125.41' to an iron rod set; thence S 05 42' 37" E 142.75' to an iron rod set; thence S 22 14' 35" E 167.39' to an iron rod set; thence S 06 45' 15" E 218.75' to an iron rod set; thence S 29 05' 34" E 93.87' to a concrete monument found; thence S 45 06' 31" W 242.02' to an iron pipe found; thence S 83 01' 07" W 99.34' to an iron pipe found; thence S 45 05' 16" W 669.05' to an iron pipe found; thence S 34 08' 11" W 305.26' to a concrete monument found; thence S 02 48' 16" W 849.18' to a concrete monument found; thence S 27 04' 05" W 251.66' to a concrete monument found; thence N 37 42' 18" W 363.32' to a concrete monument found; thence N 58 25' 26" W 535.88' to a concrete monument found; thence N 54 05' 38" E 246.74' to a concrete monument found; thence N 29 04' 06" W 152.91' to a concrete monument found; thence S 07 32' 56" W 695.25' to a concrete monument found; thence N 38 38' 48" W 385.15' to a concrete monument found; thence N 40 55' 36" E 450.38' to a concrete monument found; thence N 10 10' 44" W 257.52' to a concrete monument found; thence S 63 09' 00" W 791.40' to a concrete monument found; thence S 26 33' 09" E 50.01' to a concrete monument found; thence S 60 11' 16" W 319.20' to a concrete monument found; thence N 26 40' 40" W 149.95' to a concrete monument found; thence N 85 40' 21" W 729.51' to a concrete monument found; thence N 14 23' 54" W 309.66' to a concrete monument found; thence N 17 35' 00" E 474.06' to a found iron pipe; thence N 61 45' 13" E 125.77' to a found iron pipe; thence N 82 49' 45" W 90.24' to a found iron pipe; thence N 15 33' 00" E 990.55' to a concrete monument found; thence N 46 05' 12" E 265.44' to a concrete monument found; thence N 77 42' 26" E 694.48' to an iron pipe found; thence along said edge of Lake Hartwell and beyond N 65 12' 03" W 613.80' to an iron pipe found in the northern right of way line of Martin Creek Road; thence with said northern right of way line of Martin Creek Road N 89 02' 30" E 585.87' to a found iron rod in said northern right of way line; thence N 39 16' 23" E 65.31' to the point of beginning, containing 252.67 acres or 10,334,910 square feet, more or less.

Together with a non-exclusive easement for rights of way for the construction, maintenance and operation of water pumping stations, industrial waste pumping station, water, sewage and industrial waste pipelines, access road, electric power and control lines and waste disposal system as set forth and defined in instrument recorded September 12, 1967 in Book 108, page 37 and shown on the plat filed in Plat Book P-28, page 292.

This being the same property conveyed unto Fajate West, Inc. by deed from WF Properties of Clemson, LLC dated _____ and recorded in Deed Book 1636, page 269 records of Oconee County, South Carolina.

186S 271.00-01-602

12.00

FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS

2007 DEC 19 P 3 55

Doc ID: 00130080000 Type: MTS
#K 2550 Pg 8-13

Return after recording to:

Alan M. Lipsitz, Esquire
Hessner Probst Adams Kleemeier, LLC
1210 Main Street, Suite 700
Columbia, South Carolina 29201

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS ("Assignment") is made this 18 day of December, 2007, by and from POINTE WEST, INC, a South Carolina corporation ("Assignor"), to and for BRANCH BANKING AND TRUST COMPANY, a North Carolina Banking corporation, having a branch office in Anderson, South Carolina ("Assignee").

Assignor is the sole owner of that certain real property located in the City of Clemson, in the County of Oconee, State of South Carolina described in Exhibit "A" attached hereto and by this reference incorporated herein (the "Property") subject to that certain Mortgage dated as of even date herewith conveyed by Assignor to Assignee and recorded concurrently herewith in the Office of the Register of Deeds in Oconee County, South Carolina (as the same may be modified, or supplemented from time to time, the "Mortgage").

For good and valuable consideration, Assignor hereby absolutely assigns and transfers to Assignee: (a) the income, rents (including, if applicable, all hotel room rents), receivables, security or similar deposits, reverses, leases, royalties, profits, earnings, products and proceeds from any and all of the Property (collectively, the "rents, issues and profits") together with the right, power and authority to collect the same; (b) all leases, written or oral, now in existence or hereafter arising, all other agreements for the use and occupancy of all or any portion of the Property, and any and all extensions or renewals of any thereof (individually "Lease" and collectively, the "Leases"); together with the right, power and authority of Assignor to alter, modify or change the terms thereof, or surrender, cancel or terminate the same; and (c) any and all guarantees of any obligations of any lessee (the "lessee") under each of the leases. Assignor irrevocably appoints Assignee his true and lawful attorney-in-fact, at any time and from time to time, at the option of the Assignee to demand, receive and enforce payment of rent, to give receipts, releases and satisfactions, and to sue, in the name of Assignor or Assignee, for all the rents, issues and profits and to apply the same to the indebtedness secured; provided, however, that Assignor shall have the right and license to collect the rents, issues and profits prior to or at any time there is no default hereunder or under any of the other loan documents evidencing and securing the Note (as defined herein) ("Loan Documents"). The assignment of the rents, issues and profits in this Assignment is an absolute assignment from Assignor to Assignee and not merely the passing of a security interest.

This Assignment is made for the purpose of securing:

- A. Payment of the principal sum, interest and indebtedness evidenced by a certain promissory note or notes (including any amendments, extensions, renewals, or substitutions thereof, collectively the "Note"), in the original aggregate principal sum of Four Million Five Hundred Thousand and 00/100 Dollars (\$4,500,000) made by Assignor payable to order of Assignee dated as of even date herewith.
- B. Payment of all other sums with interest becoming due and payable to Assignee under the provisions of this Assignment and the Loan Documents.
- C. The payment, performance and discharge of each and every obligation, covenant and agreement of the Assignor contained herein or in the Loan Documents, or in any other obligation of Assignor to Bank, and all costs of collection including reasonable attorney's fees, as provided in the Note.

BBT 627 (9511)

copy - vacuum
PO Box 1633
Clemson, SC 29633
010346

The indebtedness and obligations described in A, B, and C above are hereinafter collectively referred to herein as the "Indebtedness".

THE ASSIGNOR WARRANTS to Assignee that the Assignor is the sole owner of its entire interest, as Lessee, in the Leases; that the Leases are valid and enforceable and have not been altered, modified or amended in any manner whatsoever except as previously disclosed in writing to Assignee; that no lease named therein is in default under any of the terms, covenants or conditions thereof; that no rent reserved in any Lease has been assigned or anticipated; that no rent for any period subsequent to the date of this Assignment has been collected more than one month in advance of the time when the same became due under the terms of any Lease; that it has full right and title to assign the Leases and all rents, issues and profits thereunder; and no other assignment of any interest therein has been made.

THE ASSIGNOR COVENANTS AND AGREES with the Assignee to observe and perform all obligations imposed under the Leases; to give prompt notice to the Assignee of any notice of default under any Leases received or given by the Assignor together with a complete copy of any such notice; at the sole cost and expense of the Assignor, to enforce, short of termination of any Lease, the performance or observance of each and every covenant and condition thereof by all parties thereto; and not to do or permit to be done anything to impair the security thereof; not to pay or collect any of the rent, issues and profits arising or accruing under the Leases or from the Property in advance of the time when the same shall become due; not to execute any other assignment of interest in the Leases or assignment of rents arising or accruing from the Leases or from the Property; not to subordinate any Lease to any other encumbrance, or permit, consent or agree to such subordination without Assignee's prior written consent; not to alter, modify or change the terms of any Lease or give any consent or exercise any option required or permitted by such terms without the prior written consent of Assignee or cancel or terminate any Lease or accept a surrender thereof or convey or transfer or suffer or permit a conveyance or transfer of the leased premises thereby or of any interest therein so as to effect, directly or indirectly, a merger of the estates and rights of, or a termination or diminution of the obligations of, any party thereto; not to alter, modify or change the terms of any guaranty of any Lease or cancel or terminate such guaranty without the prior written consent of the Assignee; not to consent to any assignment of or subletting under any Lease, whether or not in accordance with its terms, without the prior written consent of the Assignee; at the Assignee's request to assign and transfer to the Assignee any and all subsequent leases upon all or any part of the Property, and to execute and deliver at the request of the Assignee all such further assurances and assignments in the Property as the Assignee shall from time to time require.

THIS ASSIGNMENT is made on the following additional terms, covenants, and conditions:

1. At any time and for any reason the Assignor shall have the right and obligation to collect and receive at the time of but not prior to, the date provided for the payment thereof, all rents, issues and profits arising under the Leases. Upon the occurrence of an event of default hereunder or under the Loan Documents, the Assignee may, at its option, without notice and without regard to the adequacy of the security for the Indebtedness, either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, take possession of the Property described in any Lease or in the Mortgage and have, hold, manage, lease and operate the same on such terms and for such period of time as the Assignee may deem proper and either with or without taking possession of such Property in its own name, demand, sue for or otherwise collect and receive all rents, issues and profits of the Property or pay the same including those past due and unpaid with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to the Assignee, and to apply any such collected rents, issues and profits to the payment of: (a) all expenses of managing the Property, including, without being limited thereby, the salaries, fees and wages, of a managing agent and such other employees as the Assignee may deem necessary or desirable, and all expenses of operating and maintaining the Property, including, without being limited thereby, all taxes, charges, claims, assessments, water rents, sewer rents and any other liens, and premiums for all insurance which the Assignee may deem necessary or desirable, and the costs of all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Property; and (b) the Indebtedness together with all costs and attorneys' fees, in such order of priority as to any of the items mentioned in this paragraph, as the Assignee in its sole discretion may determine, any statute, law, custom or use to the contrary notwithstanding. The exercise by the Assignee of the option granted it in this paragraph and the collection of the rents, issues and profits and the application thereof as herein provided shall not be considered a waiver of any default by the Assignor under this Assignment the Note or the Mortgage, or under any Lease.

2. The Assignee shall not be liable for any loss sustained by the Assignor resulting from any act or omission of the Assignee or from managing the Property unless such loss is caused by the willful misconduct or gross negligence of the Assignee. The Assignee shall not be obligated to perform or discharge, nor does the Assignee hereby undertake to perform or discharge, any obligation, duty or liability under any Lease or under or by reason of this Assignment, and the Assignor shall, and does hereby agree, to indemnify the Assignee for, and to hold the Assignee harmless from, any and all liability, loss or damage which may or might be incurred under any Lease or under or by any reason of this Assignment, and from any and all claims and demands whatsoever which may be asserted against the Assignee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any Lease. Should the Assignee incur any such liability under any Lease or under or by reason of this Assignment or in defense of any such claims or demands, the amount thereof, including costs, expenses and a reasonable attorney's fee shall be secured hereby and the Assignor shall reimburse the Assignee therefor immediately upon demand, and upon the failure of the Assignor to do so, the Assignee may, at its option, declare the Indebtedness immediately due and payable. This Assignment shall not operate to place responsibility for the control, care, management or repair of the Property or any portion thereof upon the Assignee, nor for the carrying out of any of the terms and conditions of any Lease; nor shall it operate to make the Assignee responsible or liable for any waste committed on the Property by any parties, or for any dangerous or defective condition of the Property or any portion thereof or for any negligence of the Assignor or its agents, in the management, upkeep, repair or control of the Property or any portion thereof resulting in loss or injury or death to any tenant, licensee, employee or stranger.

3. The Assignee shall have the right to assign the Assignor's right, title and interest in the Leases to any subsequent holder of the Mortgage, subject to the provisions of this instrument, and to assign the same to any person acquiring title to the Property through foreclosure or otherwise. After the Assignee shall have been barred and foreclosed of all right, title and interest and equity of redemption in the Property so assigned of the Assignor's interest in the Leases shall be liable to account to the Assignor for the rents, issues and profits thereafter accruing.

4. Upon payment and performance in full of the Indebtedness, this Assignment shall become and be void and of no effect, but the affidavit, certificate, letter or statement of any officer, agent or attorney of the Assignee showing any part of the Indebtedness to remain unpaid or unperformed shall be and constitute conclusive evidence of the validity, effectiveness, and continuing force of this Assignment and any person may, and is hereby authorized to, rely thereon. The Assignor, as the lessor under any Lease, hereby authorizes and directs the lessee named in any such Lease or any other or future lease or occupant of the Property described therein upon receipt from the Assignee of written notice that the Assignee is then the holder of the Note to pay over to Assignee all rents, issues, and profits arising or accruing under such Leases or from the Property and to continue so to do until otherwise notified by the Assignee.

5. The Assignee may take or release other security for the payment of the Indebtedness may release any party primarily or secondarily liable therefor and may apply any other security held by it to the satisfaction of the Indebtedness without prejudice to any of its rights under this Assignment.

6. Nothing contained in this Assignment and no act done or omitted by the Assignee pursuant to the powers and rights granted it hereunder shall be deemed to be a waiver by the Assignee of its rights and remedies under the Loan Documents, and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by the Assignee under the terms of the Loan Documents. The right of the Assignee to collect the Indebtedness and to enforce any other security therefor held by it may be exercised by the Assignee either prior to, simultaneously with, or subsequent to any action taken by it hereunder.

7. Assignor hereby assigns to Assignee any portion of an award payable by reason of condemnation action under the right of eminent domain, and directs that such award shall be paid directly to Assignee.

8. Any guaranty of payment and performance of any Lease shall not be released, modified, or limited in any manner without the prior written consent of the Assignee.

9. This Assignment is made, executed and delivered in the State of South Carolina and shall be governed by the laws of the State of South Carolina. Each provision of this Assignment shall be interpreted in such a manner as to be effective and valid under the applicable law, but if any provision hereof shall be prohibited by or invalid under the applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Assignment.

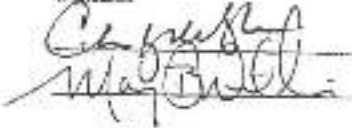
10. In case of any conflict between the terms of this instrument and the terms of the Mortgage, the terms of this Assignment shall control.

11. **WAIVER OF JURY TRIAL.** UNLESS EXPRESSLY PROHIBITED BY APPLICABLE LAW, THE UNDERSIGNED HEREBY WAIVES THE RIGHT TO TRIAL BY JURY OF ANY MATTERS OR CLAIMS ARISING OUT OF THIS ASSIGNMENT OR ANY OF THE LOAN DOCUMENTS EXECUTED IN CONNECTION HERewith OR OUT OF THE CONDUCT OF THE RELATIONSHIP BETWEEN THE UNDERSIGNED AND ASSIGNEE. THIS PROVISION IS A MATERIAL INDUCEMENT FOR ASSIGNEE TO MAKE THE LOAN SECURED BY THIS ASSIGNMENT. FURTHER, THE UNDERSIGNED HEREBY CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF ASSIGNEE, NOR ASSIGNEE'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT ASSIGNEE WOULD NOT SEEK TO ENFORCE THIS WAIVER OR RIGHT TO JURY TRIAL PROVISION. NO REPRESENTATIVE OR AGENT OF ASSIGNEE, NOR ASSIGNEE'S COUNSEL, HAS THE AUTHORITY TO WAIVE, CONDITION OR MODIFY THIS PROVISION.

THIS ASSIGNMENT, together with the covenants and warranties herein contained, shall inure to the benefit of the Assignee and any subsequent holder of the Note and Mortgage and shall be binding upon the Assignor, its successors and assigns and any subsequent owner of the Property.

IN WITNESS WHEREOF, the Assignor has hereunto set his hand and seal, or caused this agreement to be executed by its duly authorized officers, and the corporate seal hereunto affixed this the 14 day first above stated.

Witness:



POINTE WEST, INC.

By: 

President

STATES OF SOUTH CAROLINA)
COUNTY OF Saluda)

ACKNOWLEDGMENT

I, Mark D. Williams, a notary public for South Carolina, do hereby certify that Thomas R. King, the President of Pointe West, Inc., a South Carolina corporation, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal (where an official seal is required by law) official seal this 16 day of December, 2007.

Mark D. Williams (SEAL)
Signature of Notary Public
My Commission Expires 2/27/2012

BBT 627 (9511)

BBT 627 (9511)

Page 5 of 6

NP001-124466.2-AQR-LAR 091605-0300

FILED FOR RECORD
OCCONEE COUNTY, S.C.
REGISTER OF DEEDS

EXHIBIT A

2007 DEC 19 P 3:55

All that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Oconee, being known and designated as Tract Two (2) on a survey prepared by Johnny W. Nobles & Associates dated 10/12/05; last revised 12/22/06 and certified January 22, 2007 and recorded in Plat Book 8242, pages 1 thru 8, records of Oconee County, South Carolina; and more fully described by the below metes and bounds description as follows:

COMMENCING at PK. Nail set in the centerline intersections of Martin Creek Road (SC37-65) and J.P. Stevens Road (S37-37), the Point of Commencement, and runs thence N 31° 45' 17" W 94.77' to an iron rod found in the northern right of way line of J.P. Stevens Road, the Point of Beginning, thence with the western right of way line of J.P. Stevens Road N 10° 07' 32" W 171.74' to a found iron rod; thence continuing with said western right of way line of J.P. Stevens Road of N 10° 50' 08" W 66.48' to a computed point; thence a new line with the centerline of Old Cherry Road the following N 86° 16' 15" E 1269.67' to a point, thence with said centerline N 84° 51' 40" E 547.07' to a point, thence with said centerline N 88° 15' 54" W 895.18' to a point, thence having said centerline S 25° 05' 24" W 305.38' to a concrete monument found; thence S 05° 15' 45" E 378.73' to a concrete monument found; thence N 38° 53' 27" W 379.80' to a concrete monument found; thence S 27° 15' 48" W 298.92' to a concrete monument found; thence S 15° 08' 00" W 339.00' to an iron pipe found; thence S 72° 41' 34" E 365.41' to a concrete monument found; thence S 16° 20' 39" W 125.41' to an iron rod set; thence S 06° 42' 37" E 142.75' to an iron rod set; thence S 22° 14' 35" E 189.39' to an iron rod set; thence S 08° 43' 16" E 218.78' to an iron rod set; thence S 29° 05' 34" E 93.59' to a concrete monument found; thence S 43° 00' 31" W 242.92' to an iron pipe found; thence S 80° 01' 07" W 99.34' to an iron pipe found; thence S 45° 05' 16" W 669.05' to an iron pipe found; thence S 34° 08' 11" W 305.26' to a concrete monument found; thence S 02° 48' 16" W 849.18' to a concrete monument found; thence S 27° 04' 05" W 251.66' to a concrete monument found; thence N 3742' 18" W 363.12' to a concrete monument found; thence N 58° 25' 26" W 535.88' to a concrete monument found; thence N 54° 05' 15" E 246.74' to a concrete monument found; thence N 29° 04' 00" W 152.91' to a concrete monument found; thence S 80° 32' 56" W 695.25' to a concrete monument found; thence N 30° 38' 48" W 385.15' to a concrete monument found; thence N 40° 56' 36" E 450.18' to a concrete monument found; thence N 10° 10' 44" W 257.52' to a concrete monument found; thence S 60° 09' 00" W 701.60' to a concrete monument found; thence S 26° 33' 00" E 58.91' to a concrete monument found; thence S 66° 13' 10" W 319.20' to a concrete monument found; thence N 26° 40' 40" W 140.98' to a concrete monument found; thence N 85° 40' 20" W 729.51' to a concrete monument found; thence N 14° 28' 54" W 309.66' to a concrete monument found; thence N 15° 35' 00" E 474.06' to a found iron pipe; thence N 61° 45' 12" E 123.77' to a found iron pipe; thence N 82° 49' 45" W 90.24' to a found iron pipe; thence N 15° 35' 00" E 936.55' to a concrete monument found; thence N 48° 05' 12" E 263.44' to a concrete monument found; thence N 77° 42' 26" E 694.48' to an iron pipe found; thence along said edge of Lake Hartwell and beyond N 67° 12' 03" W 613.80' to an iron pipe found in the northern right of way line of Martin Creek Road; thence with said northern right of way line of Martin Creek Road N 89° 02' 30" E 585.87' to a found iron rod in said northern right of way line; thence N 19° 16' 33" E 65.27' to the point of beginning, containing 232.67 acres or 10,134,910 square feet, more or less.

Together with a non-exclusive easement for rights of way for the construction, maintenance and operation of water pumping stations, industrial waste pumping station, water, sewage and industrial waste pipelines, access road, electric power and control lines and waste disposal system as set forth and defined in instrument recorded September 12, 1967 in Book 10F, page 77 and shown on the plat filed in Plat Book P-28, page 292

This being the same property conveyed unto Points West, Inc. by deed from WP Properties of Clemson, LLC dated _____ and recorded in Deed Book 1524, page 204 records of Oconee County, South Carolina.

TMS 271 CC-01-002



Doc ID: 001881000009 Type: HDG

2550 p2-14-22

2007 DEC 19 P 3:56

ASSIGNMENT OF CONSTRUCTION DOCUMENTS

THIS ASSIGNMENT OF CONSTRUCTION DOCUMENTS ("Assignment"), made the day of December, 2007, by POINTE WEST, INC. (the "Assignor"), to BRANCH BANKING AND TRUST COMPANY (the "Lender").

WITNESSETH:

WHEREAS, Assignor and Lender have on even date herewith executed various documents related to that certain loan in the aggregate amount of up to Four Million Five Hundred Thousand and No/100 Dollars (\$4,500,000.00) (the "Loan") from Lender to Assignor for the purpose of acquiring certain real property to be used for the constructing, furnishing, and equipping of a mixed use office, industrial, retail and residential development (collectively, the "Project") located in the City of Clemson, Pickens County, South Carolina (the "Land"), which is more particularly described on Exhibit A attached hereto and made a part hereof; and

WHEREAS, it is a condition precedent to the making of advances under the Loan that this Assignment be provided to Lender to preserve and protect the interest of Lender as evidenced by the Loan Documents; and

WHEREAS, Assignor acknowledges that Lender would be unwilling to extend the Loan to Borrower without this Assignment; and

WHEREAS, all other capitalized terms not otherwise defined herein shall have the respective meanings set forth in the Loan Agreement and Addendum thereto, each dated of even date herewith between Lender and Assignor and others (the "Loan Agreement") or the Loan Documents (as defined in the Loan Agreement).

NOW, THEREFORE, in consideration of all obligations of Assignor to the Lender (the "Obligations") and also in consideration of the further sum of FIVE DOLLARS (\$5.00) to the Assignor in hand well and truly paid by the Lender at and before the sealing and delivery hereof, the receipt and sufficiency of which are hereby acknowledged, Assignor does hereby grant, bargain, sell, transfer, convey and assign the following rights:

GRANTING CLAUSE ONE

All of the right, title, interest and estate of Assignor in, to and under all general construction contracts, architect contracts, engineer contracts, contracts for labor, contracts for materials, plans and specifications, and property management agreement whether now existing or hereafter entered into or arising (whether one or more being hereinafter referred to as the "Assigned Contracts and Documents") relating to the Project; together with and including all addenda, amendments, commitments, general conditions, modifications and supplements in any way executed in connection with or related to the said Assigned Contracts and Documents (herein also referred to as the "Assigned Contracts and Documents") subject to the terms and conditions herein contained.

1 year
PO Box 1633
Clemson SC
29633
010347 / 500

GRANTING CLAUSE TWO

All proceeds (including penalties, claims, refunds, funds, accounts, deposits, instruments, general intangibles, notes or chattel paper) related to Granting Clause One.

AND Assignor covenants with and represents and warrants and agrees with Lender as follows:

ARTICLE I

Intention of Present Assignment

Assignor and Lender intend that the Assignment of all of the Assignor's right, title, interest and estate in, to and under the Assigned Contracts and Documents shall be a present, absolute and unconditional assignment, it being specifically understood and agreed that the Lender shall not exercise any rights granted hereunder or resort to any benefit under or enforce any provisions of any of the Assigned Contracts and Documents unless and until an Event of Default shall have occurred under the Loan Agreement or any of the Loan Documents.

ARTICLE II

Representations and Warranties of Assignor

Assignor hereby represents and warrants, in respect of itself and the Assigned Contracts and Documents set forth in the Granting Clause relating to it, as follows:

SECTION 2.01 Quality of the Assigned Contracts and Documents Assignor warrants that there have been no prior assignments of any of the Assigned Contracts and Documents; that each agreement, obligation, or undertaking referred to in each of the Assigned Contracts and Documents is or will be a valid, enforceable agreement; that no party thereto is in default to any other party thereunder and that all covenants, conditions and agreements have been performed as required therein, except those not due to be performed until after the date hereof.

SECTION 2.02 Authority of Assignor Assignor had, has or shall promptly obtain full power and authority to enter into the Assigned Contracts and Documents and make this Assignment thereof and the person executing such agreements on behalf of Assignor is duly authorized to so act on behalf of Assignor.

SECTION 2.03 Consent of Lender to Materially Alter Assigned Contracts and Documents Assignor warrants that it will not, without the prior written approval of Lender, release, terminate, cancel, or materially modify or amend any of the Assigned Contracts and Documents in any respect, it being understood that such approval will not be unreasonably withheld by Lender, and any such action by Assignor without such approval by Lender will be invalid and without legal operation or effect.

SECTION 2.04 Warranty Against Further Encumbrance or Transfer of Assigned Contracts and Documents. Assignor warrants that it will not sell, pledge, mortgage or otherwise transfer or encumber any of the Assigned Contracts and Documents so long as this Assignment is in effect.

SECTION 2.05 Additional Contracts. Assignor acknowledges that this Assignment assigns all interests of Assignor in the contracts and documents described hereinabove which are entered into subsequent to the date hereof and hereby warrants that it will, prior to execution of such contracts, provide copies of such contracts and documents to Lender for its review and approval, approval of which shall not be unreasonably withheld.

SECTION 2.06 Construction Covenants. Construction of the Project shall commence in the manner required by the Plans and Specifications and be completed no later than required by the Loan Agreement. Assignor shall take all actions necessary to have any mechanic's and materialmen's liens filed against the Project released or transferred to bond within ten (10) days of the date it receives notice of the filing of any such lien. All construction by Assignor shall be performed strictly in compliance with all applicable statutes, ordinances, codes, regulations and restrictions.

ARTICLE III

Liability of Lender with Respect to Assigned Contracts and Documents

SECTION 3.01 Non-Assumption. Anything to the contrary contained in this Assignment notwithstanding, Assignor and each and every other party (the "Contracting Party") in each and every one of the Assigned Contracts and Documents, as evidenced by a consent of Contracting Party which has been or will be obtained and provided to Lender by Assignor, agree (or will agree in such consent) that Lender does not assume any of the obligations or duties of the Assignor under or with respect to any of the Assigned Contracts and Documents unless and until Lender shall have given to such other Contracting Party or Parties thereto, respectively, written notice that it has affirmatively exercised its rights to acquire and/or operate or cause the acquisition and/or operation of the Land and improvements thereon upon or after the occurrence of an Event of Default occurring under any of the Loan Documents. Hence, absent express notice to the applicable Contracting Party, the Lender does not hereby assume any of Assignor's obligations or duties under or in connection with the Assigned Contracts and Documents. In the event that Lender does not itself undertake to acquire and/or operate the Land and improvements thereon, such obligations and duties may be assumed by the person or entity so undertaking such acquisition and/or operation and designated by Lender and Lender shall have no liability (including without limitation of any nature arising out of the acts or omissions of said designee) for performance of any such obligations and duties. In addition, for the purpose of acquisition and/or operation of the Land and improvements thereon, Lender may reassign its right, title and interest in the Assigned Contracts and Documents to any persons or entities in its discretion upon notice to each Contracting Party without any further requirement for Assignor's or any Contracting Party's consent and any such reassignment shall be valid and binding upon Assignor and each other Contracting Party as fully as if each had expressly approved the same.

SECTION 3.02 No Liability of Lender. Neither this Assignment nor anything contained herein shall be construed to impose any liability or obligation on Lender on or with respect to the Assigned Contracts and Documents and this Assignment is expressly conditioned thereon. If at any time Lender shall be deemed to have incurred any liability or obligation as a result of this Assignment, Lender may at its sole and exclusive option terminate this Assignment, whereupon no liability or obligation of any nature shall be deemed to have been incurred.

ARTICLE IV

Power of Attorney

SECTION 4.01 Power of Attorney. Assignor hereby irrevocably with full power of substitution constitutes and appoints Lender as its attorney-in-fact, such appointment being coupled with an interest with the right to demand, receive, and enforce Assignor's rights with respect to the Assigned Contracts and Documents, to make payments thereunder and give appropriate receipts, releases and satisfactions for and on any other purpose related to this Assignment or the acquisition and/or operation of the Land and improvements thereon on behalf of and in the name of Assignor or, at the option of Lender in the name of Lender, with the same force and effect as Assignor could have done if this Assignment had not been made, provided that such power of attorney may only be exercised after an Event of Default under any Loan Document. If Lender purports to exercise any right of Assignor or to do any act in Assignor's name under the Assigned Contracts and Documents pursuant to the foregoing power of attorney, such Contracting Party shall be entitled to rely upon Lender's advice that Lender is entitled to do so without regard to any contrary notice, advice or demand by Assignor or any other party.

ARTICLE V

Lender's Rights under Assignment Non-Exclusive

SECTION 5.01 Additional Rights of Lender. Upon the occurrence of an Event of Default under the Loan Agreement or any of the Loan Documents, Lender may, without affecting any of its rights or remedies against Assignor under any other instrument, document or agreement, exercise its rights under this Assignment in any other manner permitted by law, and in addition Lender shall have and possess, without limitation, any and all rights and remedies of a secured party under the South Carolina Uniform Commercial Code or otherwise provided by applicable law.

ARTICLE VI

Lender's Right to Indemnification

SECTION 6.01 Indemnification. Assignor hereby agrees to indemnify and hold Lender harmless from and against any and all claims, demands, liabilities, losses, lawsuits, judgments, and costs and expenses (including without limitation reasonable attorneys' fees) to which Lender may become exposed, or which Lender may incur, in exercising any of its rights under this Assignment.

ARTICLE VII

Binding Upon Heirs

SECTION 7.01 Binding Nature. This Assignment shall be binding upon and inure to the benefit of the heirs, legal representatives, permitted assigns, and successors in interest of the Assignor and Lender and to each of the respective Contracting Parties to the Assigned Contracts and Documents.

ARTICLE VIII

Additional Provisions

SECTION 8.01 Additional Actions. Assignor further agrees that it will take any and all actions necessary for Lender to exercise its rights under this Assignment, including, but not limited to, executing any and all additional contracts, documents or instruments reasonably requested by Lender from time to time.

SECTION 8.02 Consent to Contracting Parties. Assignor shall immediately obtain a consent to this Assignment in a form and content acceptable to Lender from each Contracting Party. In addition, to the extent the granting of this Assignment by the Assignor shall constitute a default under any Assigned Contract, this Assignment shall not be deemed effective as to any such Assigned Contract until such consent is executed.

SECTION 8.03 Consent of Lender to Changes in Assignment. Any change, amendment, modification, abridgement, cancellation, or discharge of this Assignment or any term or provision hereof shall be invalid without the written consent of Lender.

SECTION 8.04 Notices. All notices and other communications hereunder shall be in writing and sent by certified mail, return receipt requested or by hand or overnight delivery service, with all charges prepaid, addressed to each party as follows:

if to Lender at:

Branch Banking and Trust Company
4007 Clemson Boulevard
Anderson, SC 29621
Attn: Richard C. Stanland, III, Senior Vice President

if to Assignor at:

Pointe West, Inc.
391 College Avenue, Suite 506
Clemson, South Carolina 29631

All such notices and correspondence shall be deemed given (a) if sent by certified mail, three (3) Business Days after being postmarked and (b) if sent by hand or overnight delivery service, when received at the above stated address or when delivery is refused.

SECTION 8.05 Recordation. Neither this Assignment nor any memorandum thereof shall be recorded without the prior written approval of Lender.


SECTION 8.06 Divisibility. If any provision hereof is determined to be illegal or unenforceable for any reason, the remaining provisions hereof shall not be affected thereby.

SECTION 8.07 Jurisdiction. This Assignment shall be governed by and construed in accordance with the laws of the State of South Carolina.

IN WITNESS WHEREOF, Assignor has executed under seal and delivered this Assignment to be effective as of the day and year first above written.

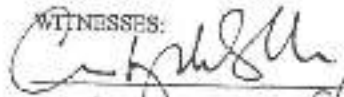
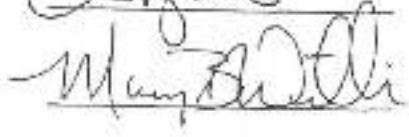
ASSIGNOR:

POINTE WEST, INC.

By: 
Its: _____

(Seal)

WITNESSES:

STATE OF South Carolina)
COUNTY OF Picken)

ACKNOWLEDGMENT

I, Mary Williams, a notary public for South Carolina, do hereby certify that Wanda Williams, the President of Pointe West, Inc., personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

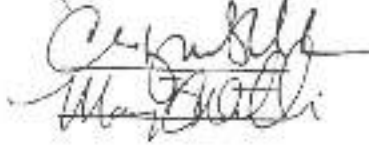
Witness my hand and seal (where an official seal is required by law) official seal this ___ day of December, 2007.

Mary Williams (SEAL)
Signature of Notary Public
My Commission Expires: 2011/12/31

CONSENT

Lender, does hereby consent to the foregoing upon the express condition that no liability of any nature shall be assumed under any of the Assigned Contracts and Documents unless and until expressly assumed in writing addressed to the Contracting Party in question.

Signed, Sealed and Delivered
In the Presence of:


Mary B. [unclear]

Branch Banking and Trust Company

By:  (Seal)
Tit: Sec. V. P.

FILED FOR RECORD
OCEANEE COUNTY, S.C.
REGISTER OF DEEDS
2007 DEC 19 P 354
EXHIBIT A.

All that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Oconee, being known and designated as Tract Two (2) on a survey prepared by Johnny W. Nubles & Associates dated 10/12/05; last revised 12/22/06 and certified January 22, 2007 and recorded in Plat Book 6242, pages 1 through 8, records of Oconee County, South Carolina; and more fully described by the below metes and bounds description as follows:

COMMENCING at PK Nail set in the centerline intersections of Martin Creek Road (SC27-65) and J.P. Stevens Road (S37-37), the Point of Commencement, and runs thence N 31 45' 17" W 94.77' to an iron rod found in the northern right of way line of J.P. Stevens Road, the Point of Beginning, thence with the western right of way line of J.P. Stevens Road N 10 07' 32" W 171.74' to a found iron rod; thence continuing with said western right of way line of J.P. Stevens Road of N 10 50' 08" W 56.48' to a computed point; thence a new line with the centerline of Old Cherry Road the following N 86 16' 15" E 1269.67' to a point, thence with said centerline N 84 51' 40" E 547.07' to a point, thence with said centerline N 86 15' 54" W 856.18' to a point, thence leaving said centerline S 25 05' 04" W 305.38' to a concrete monument found; thence S 05 15' 45" E 878.73' to a concrete monument found; thence N 38 58' 27" W 379.80' to a concrete monument found; thence S 27 15' 48" W 258.92' to a concrete monument found; thence S 15 08' 00" W 229.00' to an iron pipe found; thence S 72 41' 34" E 365.41' to a concrete monument found; thence S 10 20' 39" W 125.41' to an iron rod set; thence S 06 42' 37" E 143.75' to an iron rod set; thence S 22 14' 35" E 167.39' to an iron rod set; thence S 06 43' 15" E 218.78' to an iron rod set; thence S 29 05' 34" E 93.57' to a concrete monument found; thence S 45 00' 31" W 242.92' to an iron pipe found; thence S 80 01' 07" W 99.34' to an iron pipe found; thence S 45 05' 16" W 669.05' to an iron pipe found; thence S 34 08' 11" W 305.26' to a concrete monument found; thence S 02 48' 16" W 849.18' to a concrete monument found; thence S 27 04' 05" W 251.56' to a concrete monument found; thence N 3742' 18" W 363.12' to a concrete monument found; thence N 58 25' 20" W 525.85' to a concrete monument found; thence N 54 05' 18" E 246.74' to a concrete monument found; thence N 29 04' 00" W 152.91' to a concrete monument found; thence S 87 32' 56" W 695.25' to a concrete monument found; thence N 30 38' 48" W 385.15' to a concrete monument found; thence N 40 56' 36" E 450.38' to a concrete monument found; thence N 10 10' 44" W 257.52' to a concrete monument found; thence S 60 09' 00" W 701.40' to a concrete monument found; thence S 28 35' 00" E 50.01' to a concrete monument found; thence S 66 13' 10" W 319.20' to a concrete monument found; thence N 26 40' 40" W 149.98' to a concrete monument found; thence N 85 40' 21" W 729.51' to a concrete monument found; thence N 14 28' 54" W 309.66' to a concrete monument found; thence N 15 35' 00" E 474.06' to a found iron pipe; thence N 61 45' 13" E 103.77' to a found iron pipe; thence N 82 49' 45" W 90.24' to a found iron pipe; thence N 15 35' 00" E 920.55' to a concrete monument found; thence N 40 05' 12" E 265.44' to a concrete monument found; thence N 77 42' 26" E 694.48' to an iron pipe found; thence along said edge of Lake Hartwell and beyond N 67 12' 05" W 613.80' to an iron pipe found in the northern right of way line of Martin Creek Road; thence with said northern right of way line of Martin Creek Road N 89 02' 30" E 545.87' to a found iron rod in said northern right of way line; thence N 39 16' 33" E 65.51' to the point of beginning, containing 232.67 acres or 10,134,910 square feet, more or less.

Together with a non-exclusive easement for rights of way for the construction, maintenance and operation of water pumping stations, industrial waste pumping station, water, sewage and industrial waste pipelines, access road, electric power and control lines and waste disposal system as set forth and defined in instrument recorded September 12, 1967 in Book 107, page 27 and shown on the plat filed in Plat Book 2-28, page 292

This being the same property conveyed unto Points West, Inc. by deed from WP Properties of Clemson, LLC dated _____ and recorded in Deed Book 11434, page 214 records of Oconee County, South Carolina.

TMS 271-08-01-002



BB&T

MORTGAGE OF REAL ESTATE

THIS MORTGAGE made this 14th day of May, 2012 by

EDNTE WEST INC (hereinafter referred to as "Mortgagor"), and granted and given to BRANCH BANKING AND TRUST COMPANY (hereinafter referred to as "Mortgagee"), a corporation organized and existing under the laws of the State of North Carolina, whose address is 4927 CLEMSON BLVD, ANDERSON, SC 29621-4118.

WHEREAS, EDNTE WEST INC (the "Borrower" if and the Mortgagee) is indebted to Mortgagee, as evidenced by a certain promissory note dated the 14th day of May, 2012

in the sum of ONE MILLION NINE THOUSAND FIVE HUNDRED DOLLARS & NO/100th Dollars \$ 1,900,000.00, and any renewals, extensions or modifications thereof, the terms of which are incorporated herein by reference. Whereas said herein, the term "Note" or "Notes" shall be deemed to include the note above described, along with any other notes, additional advance agreements, or other documents now or hereafter extending any debt whatsoever incurred by Mortgagee (or an affiliate of Mortgagee) under any interest rate swap transactions, interest rate cap and/or floor transactions, interest rate collar transactions, swap agreements (as defined in 11 U.S.C. § 101) or other similar transactions or agreements, including without limitation any ISDA Master Agreement entered by the Mortgagee or Borrower and all Schedules and Confirmations entered into in connection therewith, hereinafter collectively referred to as a "Pledge Agreement", the terms of which are incorporated herein by reference.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that the Mortgagor, for and in consideration of the aforesaid indebtedness and in order to secure the payment thereof together with any renewals or extensions or modifications thereof, and also to secure in accordance with §20-3-50, As Amended, of the Code of Laws of South Carolina (1976) or any such successor statute as may apply:

1. All future advances and repayments that may subsequently be made to the Mortgagor evidenced by the Note(s) and by all renewals and extensions thereof; and

2. All other indebtedness of Mortgagor to Mortgagee, now or hereafter existing, whether direct or indirect, including without limitation any advances made by Mortgagee to pay drawings on any irrevocable standby or commercial letter of credit issued on the account of the Mortgagor or Borrower pursuant to an application therefor, the maximum amount of all indebtedness outstanding at any one time secured hereby not to exceed \$ 1,000,000.00, plus interest thereon, all charges and expenses of collection incurred by Mortgagee including Court costs and reasonable attorney's fees, has granted, bargained, sold, assigned, released and does by these presents grant, bargain, sell, assign and release unto the Mortgagee, its successors and assigns the following described property:

Pat Olson
1300 PO Box 1133
Clemson SC
29633

See attached Exhibit A

018023

FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS
MAY 20 10 42

Together with all and singular improvements thereon and the rights, members, hereditaments and appurtenances to the same belonging or in any way appertaining, all the rents, issues, and profits thereof (provided, however that, unless otherwise agreed, the Mortgagee shall be entitled to collect and retain the net rents, issues, and profits until default hereunder); and including all heating, plumbing, and lighting fixtures and equipment now or hereafter attached to or used in connection with the real estate herein described (herein collectively the "Property").

TO HAVE AND TO HOLD, all the said Property unto the Mortgagee, its successors and assigns forever.

The Mortgagee covenants that he is lawfully seized of the premises herein above described in fee simple absolute (or such other estate, if any, as is stated hereinafter), that he has good right, and lawful authority to sell, convey, or encumber the same, and that the premises are free and clear of all liens and encumbrances whatsoever, except as listed in the title opinion or title insurance policy which Mortgagee has obtained in the transaction in which Mortgagee obtained this Mortgage. The Mortgagee further covenants to warrant and forever defend title to the premises as herein conveyed unto the Mortgagee, from and against all persons who may ever lawfully claim the same or any part thereof.

The Mortgagee (and where more than one, each jointly and severally) agrees and consents to the following terms, covenants, and conditions set forth herein and in any Rider attached hereto and incorporated herein:

1. That if he is a maker or obligor on the Note(s), he will promptly pay the principal of and interest on the indebtedness evidenced by the said Note(s) and any subsequent note or agreement concerning additional advances, of the time and in the manner therein provided. Mortgagor shall timely pay and perform any obligation, covenant or warranty contained on any of this mortgage but also any other mortgage, or writing which gives rise to, or which may constitute a lien upon any of the Property. Upon request of Mortgagee, Mortgagee promptly shall furnish satisfactory evidence of such payment or performance. Mortgagee shall not incur into, terminate, cancel or amend any interest, lease, or contract affecting the Property or any part thereof without the prior written consent of the Mortgagee.





2. That the lien of this instrument shall remain in full force and effect during any postponement or extension of the time of payment of or any other modification relating to the indebtedness or any part thereof secured hereby.

3. That he will pay as they become due all mortgage loan insurance premiums, taxes, assessments, water rates, and other governmental or municipal charges, fines or impositions, assessed against the property hereby mortgaged. If the Mortgagee fails to make any payments provided for in this item or any other payments for taxes, assessments, or the like, the Mortgagee may pay the same, and all sums so paid shall bear interest at the same rate as the principal debt secured hereby (from the date of such advance) and shall be secured by this mortgage.

4. That he will keep the Property in as good order and condition as it is now, reasonable wear and tear excepted, and will not commit or permit any waste thereon.

5. That he will continuously maintain fire, flood and such other hazard insurance as the Mortgagee may require on the improvements which form a part of the Property, now or hereafter constructed on the Property, and will pay promptly when due any premiums on the insurance. If it is determined at any time that any of the Property is located in a flood hazard area as defined in the Flood Disaster Protection Act of 1973, the Mortgagee shall obtain and maintain flood insurance on Property at Mortgagee's expense for as long as this Mortgage is in effect. Flood insurance coverage shall be in an amount equal to the lesser of (a) the maximum amount secured as set forth herein or (b) the maximum limit of coverage made available for the particular type of property under applicable law. If the Mortgagee shall fail to procure or maintain fire or flood insurance coverage in the specified amount for the Property within a reasonable time of receiving notice from Mortgagee of either the requirement or of the issue of an existing policy, Mortgagee may, but shall not be obligated to, expend for the account of Mortgagee any sums which may be necessary to purchase the required hazard or flood insurance, which shall be fully secured by this Mortgage and which shall accrue interest from the time expended until paid at the rate set forth in the Note(s). Mortgagee shall cause all policies and renewals thereof to be delivered to the Mortgagee. All insurance shall be carried with companies approved by Mortgagee and shall contain a loss payable clause (New York form) in favor of and in a form acceptable to Mortgagee. In the event of loss, Mortgagee will give immediate written notice to Mortgagee, who may make proof of loss if such is not made promptly by the Mortgagee. Such notice if hereby authorized and directed to make payment for such loss directly and solely to the Mortgagee, and the insurance proceeds, or any part thereof, may be applied by the Mortgagee at its option either to the reduction of the indebtedness hereby secured or to the restoration of the Property damaged, but Mortgagee shall not be obligated to see to the proper application of any amount paid over to Mortgagee.

6. That he hereby assigns all the rents, issues, and profits of the Property from and after any default hereunder, and should legal proceedings be instituted pursuant to this instrument, then the Mortgagee shall have the right as bona fide assignee or assignor of the rents, issues, and profits, who, after deducting all charges and expenses attending such proceedings and the execution of his trusts as aforesaid, shall apply the residue of the rents, issues, and profits toward the payment of the debt secured hereby. Mortgagee hereby appoints Mortgagee as Mortgagee's attorney-in-fact to collect any rents and profits, with or without suit, and to apply the same, less expenses of collection to any indebtedness owing under the Note(s) in any manner as Mortgagee may desire. Such appointment shall constitute a power coupled with an interest which shall remain in full force and effect as long as any indebtedness secured by the Note(s) remains outstanding.

7. That he will pay as they become due the principal and interest on all notes, obligations, contracts or agreements, secured by any mortgage, lien, or security interest having priority over this mortgage as to the Property described herein. If the Mortgagee fails to make any of the payments so provided for in this section, Mortgagee may pay the same and add any amounts so paid to the principal debt, and all sums so paid shall bear interest at the same rate as the principal debt secured hereby and shall be secured by this mortgage.

8. Mortgagee for itself, its predecessors and assigns represents, warrants and agrees that (a) neither Mortgagee nor any other person has generated, manufactured, stored, received, processed, released, discharged or disposed of any Hazardous Materials on the Property or received any notice from any Governmental Authority (hereinafter defined) or other person with regard to a release of Hazardous Materials on, from or otherwise affecting the Property; (b) neither Mortgagee or any other person has violated any applicable Environmental Laws (hereinafter defined) relating to or affecting the Property; (c) the Property is presently being operated in compliance with all Environmental Laws (there are no circumstances presently existing upon or under the Property, or relating to the Property which may violate any applicable Environmental Laws, and there is not now pending, or threatened, any action, suit, investigation or proceeding against Mortgagee relating to the Property (or against any other party relating to the Property) seeking to enforce any right or remedy under any of the Environmental Laws; (d) except in strict compliance with Environmental Laws, the Property shall be kept free of Hazardous Materials and shall not be used to generate, manufacture, transport, store, store, handle, dispose, process or release Hazardous Materials; (e) Mortgagee shall at all times comply with and ensure compliance by all other parties with all applicable Environmental Laws and shall keep the Property free and clear of any such liability pursuant to any applicable Environmental Laws; (f) Mortgagee has obtained and will at all times continue to obtain and/or maintain all licenses, permits and other directives from any Governmental Authority necessary to comply with Environmental Laws; Mortgagee is in full compliance with the terms and provisions of the Environmental Requirements (hereinafter defined) and will continue to comply with the terms and provisions of the Environmental Requirements; (g) Mortgagee shall immediately give Mortgagee oral and written notice in the event that Mortgagee receives any notice from any Governmental Authority or any other party with regard to any release or storage of Hazardous Materials on, from or affecting the Property and shall conduct and complete all investigations, sampling, and testing, and all removal, removal, and other actions necessary or required to clean up and remove all Hazardous Materials on, from or affecting the Property in accordance with all applicable Environmental Laws. Mortgagee hereby agrees to indemnify Mortgagee and hold Mortgagee harmless from and against any and all losses, liabilities, damages, injuries (including, without limitation, reasonable attorneys' fees) and claims of any and every kind (including, without limitation, those incurred or suffered by, or asserted against, Mortgagee for, with respect to, or as a direct or indirect result of (i) the presence on, or under, or the escape, spillage, release or release on or from the Property of any Hazardous Materials regardless of whether or not caused by or within the control of Mortgagee, (ii) the violation of any Environmental Laws or Environmental Requirements relating to or affecting the Property, whether or not caused by or within the control of Mortgagee, (iii) the failure by Mortgagee to comply fully with the terms and provisions of this paragraph, or (iv) any warranty or representation made by Mortgagee in this paragraph being false or untrue in any material respect). The obligations and liabilities of Mortgagee under this paragraph shall survive the foreclosure of the Mortgage, the delivery of a deed in lieu of foreclosure, the completion of the Note, or if otherwise expressly permitted in writing by the Bank, the sale or disposition of any part of the Property.

In the event that any of the Mortgagee's representations or warranties shall prove to be materially false or Mortgagee fails to satisfy any Environmental Requirement, Mortgagee, in its sole discretion, may (a) choose to assume compliance with governmental directives and the Mortgagee agrees to reimburse Mortgagee for all costs, expenses (including all reasonable attorneys' fees, whether in-house or independent), fines, penalties, judgments, suits, or liabilities whatsoever associated with such compliance; or (b) seek all legal and equitable remedies available to it including, but not limited to, injunctive relief compelling Mortgagee to comply with all Environmental Requirements relating to the Property. Mortgagee's obligations shall be in addition to all rights granted under the Note or other document and payments by Mortgagee under this provision shall not release Mortgagee's obligations and liabilities thereunder. In the event Mortgagee undertakes compliance with Environmental Requirements which Mortgagee failed to perform or which Mortgagee determines is necessary to settle or any part of the Property, Mortgagee withholds Mortgagee and/or Mortgagee's agents to prepare and execute in Mortgagee's behalf any notices or other communications relating to the removal and/or disposal of any Hazardous Materials from, at or on the Property. Mortgagee acknowledges that Mortgagee does not own, or have a security interest in, any Hazardous Materials which exist on, originate from, or affect the Property. All amounts expended by the Mortgagee in connection with the exercise of its rights hereunder (including reasonable attorneys' fees and the fees of any environmental consultant) shall be a part of the indebtedness secured by this Mortgagee.

For purposes of this Mortgage, "Environmental Laws" means the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, and any "Super Fund" or "Super Fund" law, or any other federal, state or local law, regulation or decree regarding, relating to or imposing liability or standards of conduct concerning any Hazardous Materials. "Environmental Requirement" means any administrative orders, decrees, judgments, consent orders, permits, licenses, authorizations, consents, settlements, agreements or other formal or informal directives or guidance issued by or entered into with any Governmental Authority or private party, including the provisions of any Environmental Law, which obligate or demand Mortgagee to investigate, remediate, treat, monitor, dispose or remove Hazardous Materials. "Governmental Authority" means any federal, state or local agency, department, court, or other administrative, legislative or regulatory federal, state or local governmental body, or any private individual or entity acting in place of such entity.

"Hazardous Materials" means and includes petroleum products, any flammable explosives, radioactive materials, poisons or any material containing asbestos, and/or any hazardous, toxic or dangerous waste, substance or material defined as such in the Environmental Laws.

9. Mortgagor shall be in default under this mortgage upon the occurrence of any of the following:

(a) Default in the payment or performance of any of the obligations, or of any covenant or warranty, in this mortgage, in the Note(s) or other document executed in connection herewith, or in any other note of Mortgagor or Borrower to Mortgagee or any contract between Mortgagee or Borrower and Mortgagee or in any contract between any third party and Mortgagee made for the benefit of Mortgagee; or

(b) Any warranty, representation or statement made or furnished to Mortgagee by or on behalf of Mortgagor or Borrower in connection with this transaction proving to have been false in any material respect when made or furnished; or

(c) Loss, theft, substantial damage, destruction to or of the Property, or the assertion or making of any levy, seizure, mechanic's or materialman's lien or attachment thereof or thereof; or

(d) Death, dissolution, termination of existence, insolvency, business failure, appointment of a Receiver for any part of the property of, assignment for the benefit of creditors by, filing of a bankruptcy petition by or against, or the inability to pay debts in the ordinary course of business of the Mortgagor, Borrower or any co-maker, endorser, guarantor or surety for Mortgagee; or

(e) Failure of a corporate Mortgagor, Borrower or co-maker, endorser, guarantor or surety for Mortgagee to maintain its corporate existence in good standing; or

(f) Upon the entry of any necessary judgment of the assessment or filing of any tax lien against Mortgagor or Borrower; or upon the issuance of any writ of government or attachment against any property, debts due or rights of Mortgagor or Borrower; or

(g) The sale (including sale by lien without actual delivery of possession), transfer or encumbrance of all or any part of the Property or any interest therein, or any change in the ownership or control of any corporate or partnership Mortgagor or Borrower, without Mortgagee's prior written consent; or

(h) If Mortgagee should otherwise deem itself, its security interest, the Property or the indebtedness evidenced by the Note(s) unsafe or insecure; or should Mortgagee otherwise believe that the prospect of payment or other performance is impaired.

10. It is agreed that the Mortgagee shall hold and enjoy the premises above conveyed until there is a default under this mortgage or in the Note(s) secured hereby. If there is a default in any of the terms, conditions or covenants of this mortgage or of any of the Note(s) secured hereby, then at the option of the Mortgagee, and without prior notice to the Mortgagor, all sums then owing by the Mortgagor, Borrower or any other obligor on the Note(s) to the Mortgagee shall become immediately due and payable, the Mortgagee may in addition enforce all other rights and remedies available against any Mortgagor or Borrower or other obligor under the Note(s) under applicable provisions of South Carolina Law and of any other law governing the Note(s). This mortgage shall remain as security for full payment of all indebtedness evidenced by the Note(s) and for performance of any obligation evidenced by the Note(s) or any document executed in connection therewith, notwithstanding the sale or release of any or all of the Property, the payment by another party of Mortgagor's obligations under the Note(s) or this mortgage, the forbearance or extension of time or payment of the indebtedness evidenced by the Note(s) or any other act or acts of any party who has assumed or incurred any obligation for the repayment of any indebtedness evidenced by the Note(s) and secured by this mortgage. None of the foregoing shall in any way affect the full force and effect of the lien of this mortgage or impair the Mortgagee's right to any other remedies against the Mortgagor or any other obligor under the Note(s). Any agreement by the Mortgagee in executing any writ of attachment or otherwise obtained by application law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Mortgagee shall not be a waiver of Mortgagee's right to prosecute maturity of the indebtedness evidenced by the Note(s) secured hereby. Time is of the essence in the payment or performance of any of the obligations, or of any covenant or warranty contained in this mortgage, or in any of the Note(s) or any other document related thereto.

11. Mortgagor understands that upon default hereunder, along with other remedies set out herein and in the above referenced Note(s), the Mortgagee may foreclose upon the mortgaged premises and ask for a deficiency judgment pursuant to §19-1-600 of the South Carolina Code of Laws (1976). Mortgagee hereby expressly waives and relinquishes any special rights which Mortgagor may have under §29-3-580 et seq., South Carolina Code of Laws (1976), as amended, and understands and agrees that a deficiency judgment, if pursued by Mortgagee, shall be determined by the highest priced bid or the judicial sale of the Property.



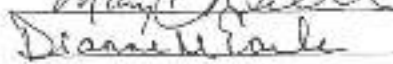
12. The covenants contained herein and in any other attached hereto and incorporated hereby shall bind, and the benefits and advantages shall inure to, the respective heirs, executors, administrators, successors, and assigns of the parties herein. Whenever used, the singular number shall be applicable to all genders and the word "Mortgagee" shall include any proxy of the indebtedness hereby secured or any transferee thereof whether by operation of law or otherwise. The liability of the Mortgagor hereunder shall, if more than one, be joint and several. The designations "company", "corporation", and "partnership" include limited liability companies and limited liability partnerships.

13. **WAIVER OF TRIAL BY JURY.** UNLESS EXPRESSLY PROHIBITED BY APPLICABLE LAW, THE UNDERSIGNED HEREBY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY MATTERS OR CLAIMS ARISING OUT OF THIS MORTGAGE OR ANY LOAN DOCUMENT EXECUTED IN CONNECTION HERewith OR OUT OF THE CONDUCT OF THE RELATIONSHIP BETWEEN THE UNDERSIGNED AND MORTGAGEE. THIS PROVISION IS A MATERIAL INDUCEMENT FOR MORTGAGEE TO MAKE THE LOAN SECURED BY THIS MORTGAGE. FURTHER, THE UNDERSIGNED HEREBY CERTIFY THAT NO REPRESENTATIVE OR AGENT OF MORTGAGEE, NOR MORTGAGEE'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT MORTGAGEE WOULD NOT SEEK TO ENFORCE THIS WAIVER OR RIGHT TO JURY TRIAL PROVISION IN THE EVENT OF LITIGATION. NO REPRESENTATIVE OR AGENT OF MORTGAGEE, NOR MORTGAGEE'S COUNSEL, HAS THE AUTHORITY TO WAIVE, CONDITION OR MODIFY THIS PROVISION.

Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. **TO THE FULLEST EXTENT PERMITTED BY LAW AND AS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN, MORTGAGOR HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.**

IN WITNESS WHEREOF, each Mortgagor has executed this Mortgage the day and year first above written.
Signed, sealed and delivered in the presence of:

If Mortgagor is a Corporation:

	(SEAL)	By: <input checked="" type="checkbox"/>	
	(SEAL)	Title:	POINTE WEST INC <small>(SOUTH CAROLINA CORPORATION)</small> Thomas D. Winters, President
_____	(SEAL)	By: _____	_____
_____	(SEAL)	Title: _____	_____

If Mortgagor is a Partnership, Limited Liability Company, or Limited Liability Partnership:

_____ (SEAL)	By: _____ (SEAL)
_____ (SEAL)	Title: _____
_____ (SEAL)	By: _____ (SEAL)
_____ (SEAL)	Title: _____
_____ (SEAL)	By: _____ (SEAL)
_____ (SEAL)	Title: _____

If Mortgagor is an individual:

_____ (SEAL)	_____ (SEAL)
_____ (SEAL)	_____ (SEAL)
_____ (SEAL)	_____ (SEAL)
_____ (SEAL)	_____ (SEAL)

STATE OF SOUTH CAROLINA
COUNTY OF Richmond

PROBATE

PERSONALLY appeared before me, the undersigned witness and made oath that s/he saw the within-named Princo West, Inc. South Carolina corporation, by Thomas P. Leland, its President, sign, seal and as its act and deed, deliver the within-written instrument for the uses and purposes therein mentioned and that s/he together with the other witness that witnessed the execution thereof

SWORN TO and subscribed before me this 14 day of May, 2008

May B. Shuler (SEAL)

Notary Public for South Carolina
My commission expires: 2/24/2010

Dianne E. Carle
Witness

STATE OF SOUTH CAROLINA
COUNTY OF _____

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within-named _____ a South Carolina general partnership, by _____, its general partner, sign, seal and as its act and deed, deliver the within-written instrument for the uses and purposes therein mentioned, and that s/he together with the other witness whose signature appears above, witnessed the execution thereof.

SWORN TO and subscribed before me this _____ day of _____, _____

(SEAL)

Notary Public for South Carolina
My commission expires: _____

Witness

STATE OF SOUTH CAROLINA
COUNTY OF _____

PROBATE

PERSONALLY appeared before me, the undersigned witness and made oath that s/he saw _____ a South Carolina limited liability company / limited partnership that by _____, its member or manager / general partner, sign, seal and as its act and deed, and deliver the foregoing within-written instrument for the uses and purposes therein mentioned and that s/he together with the other witness witnessed the execution thereof.

SWORN TO and subscribed before me this _____ day of _____, _____

(SEAL)

Notary Public for South Carolina
My commission expires: _____

Witness

STATE OF SOUTH CAROLINA
COUNTY OF _____

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within-named _____, sign, seal and as his/her act and deed, deliver the within-written instrument for the uses and purposes therein mentioned, and that s/he together with the other witness whose signature appears above, witnessed the execution thereof.

SWORN TO and subscribed before me this _____ day of _____, _____

(SEAL)

Notary Public for South Carolina
My commission expires: _____

Witness

FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS

2008 MAY 20 P 2 42.

EXHIBIT A

All that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Oconee, being known and designated as Tract Two (2) on a survey prepared by Johnny W. Nobles & Associates dated January 22, 2007 and recorded in Plat Book B242, pages 1 thru 8, records of Oconee County, South Carolina, and more fully described by the below metes and bounds description as follows:

COMMENCING at PK Nail set in the centerline intersections of Martin Creek Road (SC37-65) and J.P. Stevens Road (S37-37), the Point of Commencement, and runs thence N 31 45' 17" W 94.77' to an iron rod found in the northern right of way line of J.P. Stevens Road, the Point of Beginning, thence with the western right of way line of J.P. Stevens Road N 10 07' 32" W 171.74' to a found iron rod; thence continuing with said western right of way line of J.P. Stevens Road of N 10 50' 08" W 66.48' to a computed point; thence a new line with the centerline of Old Cherry Road the following N 88 16' 15" W 1269.67' to a point, thence with said centerline N 84 51' 40" W 547.07 to a point, thence with said centerline N 86 15' 54" W 896.18' to a point, thence leaving said centerline S 25 05' 24" W 305.38' to a concrete monument found; thence S 05 15' 45" E 878.73' to a concrete monument found; thence N 38 58' 27" W 379.80' to a concrete monument found; thence S 27 15' 48" W 298.92' to a concrete monument found; thence S 15 08' 00" W 239.00' to an iron pipe found; thence S 72 41' 34" E 365.41' to a concrete monument found; thence S 16 20' 39" W 125.41' to an iron rod set; thence S 06 42' 37" E 142.75' to an iron rod set; thence S 22 14' 35" E 167.39' to an iron rod set; thence S 06 43' 16" E 218.78' to an iron rod set; thence S 29 05' 34" E 93.57' to a concrete monument found; thence S 45 00' 31" W 242.92' to an iron pipe found; thence S 80 01' 07" W 99.54' to an iron pipe found; thence S 45 05' 16" W 669.05' to an iron pipe found; thence S 34 08' 11" W 305.26' to a concrete monument found; thence S 02 48' 16" W 849.18' to a concrete monument found; thence S 27 04' 05" W 251.66' to a concrete monument found; thence N. 3742' 18" W 363.12' to a concrete monument found; thence N 58 25' 26" W 535.88' to a concrete monument found; thence N 54 05' 18" E 246.74' to a concrete monument found; thence N 29 04' 00" W 152.91' to a concrete monument found; thence S 80 32' 56" W 695.25' to a concrete monument found; thence N 30 38' 48" W 385.15' to a concrete monument found; thence N 47 56' 36" E 450.38' to a concrete monument found; thence N. 10 10' 44" W 257.52' to a concrete monument found; thence S 60 09' 00" W 701.40' to a concrete monument found; thence S 26 33' 00" E 50.01' to a concrete monument found; thence S 66 13' 10" W 319.20' to a concrete monument found; thence N 26 40' 40" W 149.98' to a concrete monument found; thence N 85 40' 21" W 729.51' to a concrete monument found; thence N 14 28' 54" W 309.66' to a concrete monument found; thence N 15 35' 00" E 474.06' to a found iron pipe; thence N 61 45' 13" E 123.77' to a found iron pipe; thence N 82 49' 45" W 90.24' to a found iron pipe; thence N 15 35' 00" E 930.55' to a concrete

monument found; thence N 46° 05' 12" E 265.44' to a concrete monument found; thence N 77° 42' 26" E 694.48' to an iron pipe found; thence along said edge of Lake Hartwell and beyond N 63° 12' 03" W 613.80' to an iron pipe found in the northern right of way line of Martin Creek Road; thence with said northern right of way line of Martin Creek Road N 89° 02' 30" E 585.87' to a found iron rod in said northern right of way line; thence N 39° 16' 33" E 65.51' to the point of beginning, containing 232.67 acres or 10,134,910 square feet, more or less.

Together with a non-exclusive easement for rights of way for the construction, maintenance and operation of water pumping stations, industrial waste pumping station, water, sewage and industrial waste pipelines, access road, electric power and control lines and waste disposal system as set forth and defined in instrument recorded September 12, 1967 in Book 10F, page 27 and shown on the plat filed in Plat Book P-28, page 282.

This being the same property conveyed unto Points West, LLC by deed from WP Properties of Clemson, LLC dated 12/17/07 and recorded in Deed Book 1634, page 264 records of Oconee County, South Carolina.

007199

*Olson
PO Box 1633
Clemson, SC
29633*

Doc ID: 00188690008 Type: M18
2688 Pg 162-169

FILED FOR RECORD
ANDERSON COUNTY, S.C.
REGISTER OF DEEDS
2008 DEC 10 P 12:14

(Space Above This Line For Recording Data)

14.00 LOAN NUMBER: C-08-10-000004

COMMERCIAL CONSTRUCTION REAL ESTATE MORTGAGE

This COMMERCIAL CONSTRUCTION REAL ESTATE MORTGAGE ("Security Instrument") is made on December 8, 2008 between the mortgagor(s) CLEMSON ACADEMIC VENTURES, LLC, a South Carolina Limited Liability Company, whose address is 391 COLLEGE AVENUE, SUITE 500, Clemson, South Carolina 29631 ("Mortgagor"), and GREER STATE BANK whose address is PO BOX 1029, GREER, South Carolina 29615 ("Lender"), which is organized and existing under the laws of the state of South Carolina. Mortgagor in consideration of loans extended by Lender up to a maximum principal amount of Two Million One Hundred Sixty Thousand and 00/100 Dollars (\$2,160,000.00) ("Maximum Principal Indebtedness"), and for other valuable consideration, the receipt of which is acknowledged, hereby mortgages, grants and conveys to Lender, its successors and assigns, forever, the following described property located in the COUNTY of ANDERSON, State of South Carolina:

Address: 101 WEST CHERRY ROAD, Seneca, South Carolina 29678
Legal Description: SEE ATTACHED EXHIBIT "A"

Together with all easements, appurtenances fronting streets and alleys, improvements, buildings, fixtures, tenements, hereditaments, equipment, tools, income, profits and royalties, personal goods of whatever description and all other rights and privileges including all minerals, oil, gas, water (whether groundwater, subterranean or otherwise), water rights (whether riparian, appropriate or otherwise, and whether or not appurtenant to the above-described real property), wells, well permits, ditches, ditch rights, reservoirs, reservoir rights, reservoir sites, storage rights, dams and water stock that may now, or at any time in the future, be located on and/or used in connection with the above-described real property; payment awards, amounts received from eminent domain, amounts received from any and all insurance payments, and timber which may now or later be located, situated, or affixed on and used in connection therewith (hereinafter called the "Property").

RELATED DOCUMENTS. The words "Related Documents" mean all promissory notes, security agreements, prior mortgages, prior deeds of trust, business loan agreements, construction loan agreements, resolutions, guaranties, environmental agreements, subordination agreements, assignments of leases and rents and any other documents or agreements executed in connection with this Security Instrument whether now or hereafter existing. The Related Documents are hereby made a part of this Security Instrument by reference thereto, with the same force and effect as if fully set forth herein.

INDEBTEDNESS. This Security Instrument secures the principal amount shown above as may be evidenced by a promissory note or notes of even, prior or subsequent date hereto, including future advances and every other indebtedness of any and every kind now or hereafter owing from Mortgagor to Lender, howsoever created or arising, whether primary, secondary or contingent, together with any interest or charges provided in or arising out

of such indebtedness, as well as the agreements and covenants of this Security Instrument and all Related Documents (hereinafter all referred to as the "Indebtedness").

MATURITY DATE. The Indebtedness, if not paid earlier, shall be due and payable on December 8, 2013.

FUTURE ADVANCES. To the extent permitted by law, this Security Instrument will secure future advances as if such advances were made on the date of this Security Instrument regardless of the fact that from time to time there may be no balance due under the note and regardless of whether Lender is obligated to make such future advances.

CROSS COLLATERALIZATION. It is the expressed intent of Mortgagor to cross collateralize all of its Indebtedness and obligations to Lender, howsoever arising and whenever incurred.

CONSTRUCTION LOAN AGREEMENT. This Security Instrument is made in conjunction with a Construction Loan Agreement dated the same date as this Security Instrument and is subject to all of the provisions of the Construction Loan Agreement as if those provisions were fully set forth in this security instrument and made a part of it.

WARRANTIES. Mortgagor, for itself, its heirs, personal representatives, successors, and assigns, represents, warrants, covenants and agrees with Lender, its successors and assigns, as follows:

Performance of Obligations. Mortgagor promises to perform all terms, conditions, and covenants of this Security Instrument and Related Documents in accordance with the terms contained therein.

Defense and Title to Property. At the time of execution and delivery of this instrument, Mortgagor is lawfully seized of the estate hereby conveyed and has the exclusive right to mortgage, grant, convey and assign the Property. Mortgagor covenants that the Property is unencumbered and free of all liens, except for encumbrances of record acceptable to Lender. Further, Mortgagor covenants that Mortgagor will warrant and defend generally the title to the Property against any and all claims and demands whatsoever, subject to the easements, restrictions, or other encumbrances of record acceptable to Lender, as may be listed in the schedule of exceptions to coverage in any abstract of title or title insurance policy insuring Lender's interest in the Property.

Condition of Property. Mortgagor promises at all times to preserve and to maintain the Property and every part thereof in good repair, working order, and condition and will from time to time, make all needed and proper repairs so that the value of the Property shall not in any way be impaired.

Removal of any Part of the Property. Mortgagor promises not to remove any part of the Property from its present location, except for replacement, maintenance and relocation in the ordinary course of business.

Alterations to the Property. Mortgagor promises to abstain from the commission of any waste on the Property. Further, Mortgagor shall make no material alterations, additions or improvements of any type whatever to the Property, regardless of whether such alterations, additions or improvements would increase the value of the Property, nor permit anyone to do so except for tenant improvements and completion of items pursuant to approved plans and specifications, without Lender's prior written consent, which consent may be withheld by Lender in its sole discretion. Mortgagor will comply with all laws and regulations of all public authorities having jurisdiction over the premises relating to the use, occupancy and maintenance thereof and shall upon request promptly submit to Lender evidence of such compliance.

Due on Sale - Lender's Consent. Mortgagor shall not sell, further encumber or otherwise dispose of, except as herein provided, any or all of its interest in any part of or all of the Property without first obtaining the written consent of Lender. If any encumbrance, lien, transfer or sale or agreement for these is created, Lender may declare immediately due and payable, the entire balance of the Indebtedness.

Insurance. Mortgagor promises to keep the Property insured against such risks and in such form as may within the sole discretion of Lender be acceptable, causing Lender to be named as loss payee or if requested



by Lender, as mortgagee. The insurance company shall be chosen by Mortgagor subject to Lender's approval, which shall not be unreasonably withheld. All insurance policies must provide that Lender will get a minimum of 10 days notice prior to cancellation. At Lender's discretion, Mortgagor may be required to produce receipts of paid premiums and renewal policies. If Mortgagor fails to obtain the required coverage, Lender may do so at Mortgagor's expense. Mortgagor hereby directs each and every insurer of the Property to make payment of loss to Lender with the proceeds to be applied, only at Lender's option, to the repair and replacement of the damage or loss or to be applied to the Indebtedness with the surplus, if any, to be paid by Lender to Mortgagor.

Payment of Taxes and Other Applicable Charges. Mortgagor promises to pay and to discharge liens, encumbrances, taxes, assessments, lease payments and any other charges relating to the Property when levied or assessed against Mortgagor or the Property.

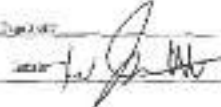
Environmental Laws and Hazardous or Toxic Materials. Mortgagor and every tenant have been, are presently and shall continue to be in strict compliance with any applicable local, state and federal environmental laws and regulations. Further, neither Mortgagor nor any tenant shall manufacture, store, handle, discharge or dispose of hazardous or toxic materials as may be defined by any state or federal law on the Property, except to the extent the existence of such materials has been presently disclosed in writing to Lender. Mortgagor will immediately notify Lender in writing of any assertion, or claim made by any party as to the possible violation of applicable state and federal environmental laws including the location of any hazardous or toxic materials on or about the Property. Mortgagor indemnifies and holds Lender harmless from any liability or expense of whatsoever nature incurred directly or indirectly as a result of Mortgagor's violation of applicable local, state and federal environmental laws and regulations or Mortgagor's involvement with hazardous or toxic materials.

Financial Information. Mortgagor agrees to supply Lender such financial and other information concerning its affairs and the status of any of its assets as Lender, from time to time, may reasonably request. Mortgagor further agrees to permit Lender to verify accounts as well as to inspect, copy and to examine the books, records and files of Mortgagor.

Lender's Right to Enter. Lender or Lender's agents shall have the right and access to inspect the Property at all reasonable times in order to attend to Lender's interests and ensure compliance with the terms of this Security Instrument. If the Property, or any part thereof, shall require inspection, repair or maintenance which Mortgagor has failed to provide, Lender, after reasonable notice, may enter upon the Property to effect such obligation; and the cost thereof shall be added to the Indebtedness and paid on Lender's demand by Mortgagor.

ASSIGNMENT OF LEASES AND RENTS. As additional security for the payment of the Indebtedness and the performance of the covenants contained herein, Mortgagor hereby assigns and transfers over to Lender all rents, income and profits ("Rents") under any present or future leases, subleases or licenses of the Property, including any guaranties, extensions, amendments or renewals thereof, from the use of the Property. So long as Mortgagor is not in default, Mortgagor may receive, collect and enjoy all Rents accruing from the Property, but not more than one month in advance of the due date. Lender may also require Mortgagor, tenant and any other user of the Property to make payments of Rents directly to Lender. However, by receiving any such payments, Lender is not, and shall not be considered, an agent for any party or entity. Any amounts collected may, at Lender's sole discretion, be applied to protect Lender's interest in the Property, including but not limited to the payment of taxes and insurance premiums and to the Indebtedness. At Lender's sole discretion, all leases, subleases and licenses must first be approved by Lender.

CONDEMNATION. Mortgagor shall give Lender notice of any action taken or threatened to be taken by private or public entities to appropriate the Property or any part thereof, through condemnation, eminent domain or any other action. Further, Lender shall be permitted to participate or intervene in any of the above described



proceedings in any manner it shall, at its sole discretion determine. Lender is hereby given full power, right and authority to receive and receipt for any and all amounts awarded as a result of the full or partial taking or appropriation and in its sole discretion, to apply such awards to the Indebtedness, whether or not then due or otherwise in accordance with applicable law. Unless Lender otherwise agrees in writing, any application of proceeds to the Indebtedness shall not extend or postpone the due date of the payments due under the Indebtedness or change the amount of such payments.

MORTGAGOR'S ASSURANCES. At any time, upon a request of Lender, Mortgagor will execute and deliver to Lender, and if appropriate, cause to be recorded, such further mortgages, assignments, assignments of leases and rents, security agreements, pledges, financing statements, or such other document as Lender may require, in Lender's sole discretion, to effectuate, complete and to perfect as well as to continue to preserve the Indebtedness, or the lien or security interest created by this Security Instrument.

ATTORNEY-IN-FACT. Mortgagor appoints Lender as attorney-in-fact on behalf of Mortgagor. If Mortgagor fails to fulfill any of Mortgagor's obligations under this Security Instrument or any Related Documents, including those obligations mentioned in the preceding paragraph, Lender as attorney-in-fact may fulfill the obligations without notice to Mortgagor. This power of attorney shall not be affected by the disability of the Mortgagor.

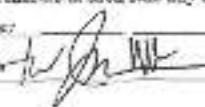
EVENTS OF DEFAULT. The following events shall constitute default under this Security Instrument (each an "Event of Default"):

- (a) Failure to make required payments when due under Indebtedness;
- (b) Failure to perform or keep any of the covenants of this Security Instrument or a default under any of the Related Documents;
- (c) The making of any oral or written statement or assertion to Lender that is false or misleading in any material respect by Mortgagor or any person obligated on the Indebtedness;
- (d) The death, dissolution, insolvency, bankruptcy or receivership proceeding of Mortgagor or of any person or entity obligated on the Indebtedness;
- (e) Any assignment by Mortgagor for the benefit of Mortgagor's creditors;
- (f) A material adverse change occurs in the financial condition, ownership or management of Mortgagor or any person obligated on the Indebtedness; or
- (g) Lender deems itself insecure for any reason whatsoever.

REMEDIES ON DEFAULT. Upon the occurrence of an Event of Default, Lender may, without demand or notice, pay any or all taxes, assessments, premiums, and liens required to be paid by Mortgagor, effect any insurance provided for herein, make such repairs, cause the abstracts of title or title insurance policy and tax histories of the Property to be certified to date, or procure new abstracts of title or title insurance and tax histories in case none were furnished to it, and procure title reports covering the Property, including surveys. The amounts paid for any such purposes will be added to the Indebtedness and will bear interest at the rate of interest otherwise accruing on the Indebtedness until paid. In the event of foreclosure, the abstracts of title or title insurance shall become the property of Lender. All abstracts of title, title insurance, tax histories, surveys, and other documents pertaining to the Indebtedness will remain in Lender's possession until the Indebtedness is paid in full.

IN THE EVENT OF THE SALE OF THIS PROPERTY UNDER THE PROCEDURE FOR FORECLOSURE OF A SECURITY INSTRUMENT BY ADVERTISEMENT, AS PROVIDED BY APPLICABLE LAW, OR IN THE EVENT LENDER EXERCISES ITS RIGHTS UNDER THE ASSIGNMENT OF LEASES AND RENTS, THE MORTGAGOR HEREBY WAIVES ANY RIGHT TO ANY NOTICE OTHER THAN THAT PROVIDED FOR SPECIFICALLY BY STATUTE, OR TO ANY JUDICIAL HEARING PRIOR TO SUCH SALE OR OTHER EXERCISE OF RIGHTS.

Upon the occurrence of an Event of Default, Lender may, without notice unless required by law, and at its option, declare the entire Indebtedness due and payable, as it may elect, regardless of the date or dates of maturity thereof and, if permitted by state law, is authorized and empowered to sell or to cause the Property to be sold at public auction, and to execute and deliver to the purchaser or purchasers at such sale any deeds of conveyance good and



sufficient at law, pursuant to the statute in such case made and provided, and out of the proceeds of the sale to retain the sums then due hereunder and all costs and charges of the sale, including attorneys' fees, rendering any surplus to the party or parties entitled to it. Any such sale or a sale made pursuant to a judgment or a decree for the foreclosure hereof may, at the option of Lender, be made en masse. The commencement of proceedings to foreclose this Mortgage in any manner authorized by law shall be deemed an exercise of the above option.

Upon the occurrence of an Event of Default, Lender shall immediately be entitled to make application for and obtain the appointment of a receiver for the Property and of the earnings, income, issue and profits of it, with the powers as the court making the appointments confers. Mortgagor hereby irrevocably consents to such appointment and waives notice of any application therefore.

NO WAIVER. No delay or failure of Lender to exercise any right, remedy, power or privilege hereunder shall affect that right, remedy, power or privilege nor shall any single or partial exercise thereof preclude the exercise of any right, remedy, power or privilege. No Lender delay or failure to demand strict adherence to the terms of this Security Instrument shall be deemed to constitute a course of conduct inconsistent with Lender's right at any time, before or after an event of default, to demand strict adherence to the terms of this Security Instrument and the Related Documents.

JOINT AND SEVERAL LIABILITY. If this Security Instrument should be signed by more than one person, all persons executing this Security Instrument agree that they shall be jointly and severally bound, where permitted by law.

SURVIVAL. Lender's rights in this Security Instrument will continue in its successors and assigns. This Security Instrument is binding on all heirs, executors, administrators, assigns and successors of Mortgagor.

NOTICES AND WAIVER OF NOTICE. Unless otherwise required by applicable law, any notice or demand given by Lender to any party is considered effective when it is deposited in the United States Mail with the appropriate postage, mailed to the address of the party given at the beginning of this Security Instrument unless an alternative address has been provided to Lender in writing. To the extent permitted by law, Mortgagor waives notice of Lender's acceptance of this Security Instrument, defenses based on suretyship, any defense arising from any election by Lender under the United States Bankruptcy Code, Uniform Commercial Code, as enacted in the state where Lender is located or other applicable law or in equity, demand, notice of acceleration, notice of nonpayment, prepayment, protest, notice of dishonor and any other notice.

TO THE EXTENT PERMITTED BY LAW, MORTGAGOR WAIVES ANY RIGHT TO NOTICE, OTHER THAN THE NOTICE PROVIDED ABOVE, AND WAIVES ANY RIGHT TO ANY HEARING, JUDICIAL OR OTHERWISE, PRIOR TO LENDER EXERCISING ITS RIGHTS UNDER THIS SECURITY INSTRUMENT.

WAIVER OF APPRAISAL RIGHTS. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may, within 30 days after the sale of the mortgaged property, apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. **THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.**

LENDER'S EXPENSES. Mortgagor agrees to pay all expenses incurred by Lender in connection with enforcement of its rights under the Indebtedness, this Security Instrument or in the event Lender is made party to any litigation because of the existence of the Indebtedness or this Security Instrument, as well as court costs, collection charges and reasonable attorneys' fees and disbursements.

Date: 

ASSIGNABILITY. Lender may assign or otherwise transfer this Security Instrument or any of Lender's rights under this Security Instrument without notice to Mortgagor. Mortgagor may not assign this Security Instrument or any part of the Security Instrument without the express written consent of Lender.

GOVERNING LAW AND JURISDICTION. This Security Instrument will be governed by the laws of the State of South Carolina.

SEVERABILITY. If a court of competent jurisdiction determines any term or provision of this Security Instrument is invalid or prohibited by applicable law, that term or provision will be ineffective to the extent required. Any term or provision that has been determined to be invalid or prohibited will be severed from the rest of the Security Instrument without invalidating the remainder of either the affected provision or this Security Instrument.

WAIVER OF JURY TRIAL. All parties to this Security Instrument waive any right to trial by jury to the extent allowed by law. This jury trial waiver applies to any claims or disputes related or incidental to the relationship established between the parties to this Security Instrument.

ORAL AGREEMENTS DISCLAIMER. This Security Instrument represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

ADDITIONAL PROVISIONS, NOTE DATED DECEMBER 08, 2008 IN THE NAME OF CLEMSON ACADEMIC VENTURES, LLC IN THE AMOUNT OF \$2,166,000.00

By signing this Security Instrument, each Mortgagor acknowledges that all provisions have been read and understood, signed, sealed and delivered by Mortgagor(s):

CLEMSON ACADEMIC VENTURES, LLC

By: [Signature] 12/8/08
Date: _____
By: THOMAS P WINKOFF
Is Member

By: [Signature]
By: YAWNTO, LLC Member
By: JAMES N WORKMAN
Is Member

[Signature] 12/8/08
Date: _____
By: WILLIAM W HESS, JR.
Is Member

Witnessed by: [Signature]
Name: _____ Date: _____

[Signature] 12/8/08
Name: _____ Date: _____

BUSINESS ACKNOWLEDGMENT

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON }

This instrument was acknowledged on the 8th day of December, 2008, by:

JAMES N WORKMAN, Member and WILLIAM W HUSS JR, Member of YAWNTO, LLC, and
THOMAS P WINKOPP, Member on behalf of CLEMSON ACADEMIC VENTURES, LLC, a
South Carolina Limited Liability Company, who personally appeared before me.

In witness whereof, I hereunto set my hand and official seal

My commission expires: ~~02/28/2012~~



(Official Seal)

THIS INSTRUMENT PREPARED BY:
GREER STATE BANK
1111 WEST POINSETT STREET
GREER, SC 29630

AFTER RECORDING RETURN TO:
GREER STATE BANK
1111 WEST POINSETT STREET
GREER, SC 29630

© 2004-2007 Georgia Computer Systems, Inc. 2004-01288 - 2007X120
Notarized Computer Software License - 01-0001

Doc 167

www.gcsystems.com
800-688-0000 Fax 706-296-1198

Total

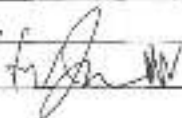


EXHIBIT A
PROPERTY DESCRIPTION

All that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Oconee, being known and designated as 1 acre, more or less, as shown on a plat thereof entitled, "Survey for Clemson Academic Ventures, LLC", dated 9/23/08 and recorded in the Office of the Register of Deeds for Oconee in Plat Book B291, at Page 6, and having the metes and bounds, courses and distances as upon said plat appear.

This is the same property conveyed unto Clemson Academic Ventures, LLC by deed from High Points, LLC dated 12/08/08 and recorded in the Oconee County Register of Deeds in Deed Book 1695 at Page 254.

FILED FOR RECORD
OCCOONEE COUNTY, S.C.
REGISTER OF DEEDS
NOV DEC 10 12 14

2008 DEC 10 P 12:15

007201

Doc ID: 001655720006 Type: HT0
#2686 #0207-212

12-08
Olson
PO Box 1433
Clemson SC
29633

(Scan Above This Line For Recording Data)

LOAN NUMBER: C-08-10-000004

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS ("Assignment"), is given on December 8, 2008 by CLEMSON ACADEMIC VENTURES, LLC, a South Carolina Limited Liability Company, whose address is 391 COLLEGE AVENUE, SUITE 506, Clemson, South Carolina 29631 ("Owner") to GREER STATE BANK which is organized and existing under the laws of the state of South Carolina, and whose address is PO BOX 1029, GREER, South Carolina 29654 ("Lender"). The Lender is, or is about to become, the holder of the following Mortgage dated December 8, 2008 in the amount of Two Million One Hundred Sixty Thousand and 00/100 Dollars (\$2,160,000.00) ("Mortgage") executed by Owner covering the following described property:

Address: 201 WEST CHERRY ROAD, Seneca, South Carolina 29678

Legal Description: SEE ATTACHED EXHIBIT "A"

("Secured Property") which mortgage secures the following Note(s):

- Loan number C-08-10-000004 with a principal amount of \$2,160,000.00

and any other indebtedness of Owner to Lender, whether now or subsequently owing or to become due and no matter how created. The Secured Property has been demised by the Owner under a lease(s) which may be described as follows:

AGREEMENT BETWEEN CLEMSON ACADEMIC VENTURES, LLC AND TRI-COUNTY TECHNICAL COLLEGE RELATING TO THE BRIDGE TO CLEMSON UNIVERSITY PROGRAM.

Lender, as a condition of making the above loan(s), has required an assignment of the lease(s) and the rents, income and profits derived from the use of the Secured Property and every part thereof, as additional security for said loan(s).

In consideration of the recitals above and as additional security for the indebtedness above, Owner assigns, transfers, sets over to, and grants Lender a security interest in the lease(s) described herein and any guarantees, renewals or extensions thereof, together with any other lease(s), whether written or unwritten, entered into before or after this Assignment and demising any part of the Mortgaged Property, and all rents, income and profits derived from the Secured Property and any portion thereof.

OWNER'S DUTIES; DEFAULT. With respect to any lease(s) entered into before or after this Assignment demising any part of the Secured Property, Owner represents to and agrees with Lender that as long as any indebtedness of Owner to Lender shall remain unpaid, Owner shall not, without the written consent of Lender: (a) cancel any lease(s); (b) accept a surrender of any lease(s); (c) modify or alter any lease(s) in any way, either orally or in writing; (d) reduce the rental set forth in any lease(s); (e) consent to any assignment of the lease(s) interest in

© 2004-2007 Copyright Computer Systems, Inc. 27001 0000-0001, 0001, 0002
Assignment of Lease and Rent - CL0811

www.compsystems.com
404-942-7600/0001-0001

[Signature]

any lease(s), or to any subletting thereunder; (f) collect or accept payment of rent, income or profit under any lease(s) for more than one (1) month in advance of the due date; (g) make any other assignment, pledge, encumbrance, or other disposition of any lease(s), or of the rents, income and profits derived from the use of the Secured Property; or, (h) fail to keep the Secured Property free and clear of all liens and encumbrances. Any of the above acts, if done without the written consent of Lender, shall be null and void and shall constitute a default under the aforesaid Note(s) and Mortgage and this Assignment.

OWNER'S WARRANTIES. Owner further covenants with and warrants to Lender that: (a) the said lease(s) are valid, presently in full force and effect and that there are no defaults now existing thereunder; and (b) Owner has not: (1) executed or granted any prior assignment, encumbrance, or security interest concerning any lease(s) or the rents thereunder; (2) performed any acts or executed any other instruments or agreements which would limit and prevent Lender from obtaining the benefit of and exercising its rights conferred by this Assignment; (3) executed or granted any modification of any lease(s) either orally or in writing; and (c) the Secured Property and the rents, income and profit derived from the use of the Secured Property are free of liens, encumbrances, claims and setoffs.

REMEDIES. It is mutually agreed between Lender and Owner that until a default or breach shall occur in the performance of Owner's covenants hereunder, or any default shall occur under the Mortgage or any loan agreement between Owner and Lender pertaining to any indebtedness referred to herein, or any default shall occur in the making of any of the payments provided for in the above described Mortgage or Note, Owner may receive, collect and enjoy the rents, income and profits accruing from the Secured Property, but not more than one (1) month in advance of the due date. In the event of any such default or breach, Lender may, at its option, immediately thereafter receive and collect all rents, income and profits from the Secured Property as they come due under the lease(s) described herein and all renewals and extensions thereof, and under any other lease(s) heretofore or hereafter entered into concerning any part of the Secured Property; and Lender shall thereafter continue to receive and collect all such rents, income and profits as long as such default or breach shall exist, and during the pendency of any foreclosure proceedings and throughout any applicable redemption period if there is a deficiency after foreclosure sale, and during all such periods. Lender may, but is not obligated to, apply some or all of the rents, income and profits to protect Lender's interest in the Property, including, but not limited to, payment of property taxes.

NOTICE. In the event of any such default or breach, Owner expressly authorizes Lender, at its option, to enter upon the Secured Property or any part thereof, by its officers, agents, or employees, for the collection of the rents, income and profits and for the operation and maintenance of the Secured Property. Owner authorizes Lender in general to perform all acts necessary for the operation and maintenance of the Secured Property in the same manner and to the same extent that the Owner might so act. After payment of all charges and expenses, including, without limitation, current and delinquent property taxes and customary operating expenses, the Lender shall credit the net amount of income received by virtue of Lender's exercise of this Assignment to any accounts due Lender under the terms and provisions of the aforesaid Note(s) and Mortgage, and in the event of any foreclosure sale, to any deficiency during any redemption period. The manner of the application of such net income and the item or items to which it shall be applied shall be within the sole discretion of the Lender, and Lender shall be accountable only for money actually received by it pursuant to this Assignment. Such entry and taking possession of the Secured Property or any part thereof by Lender, may be made by actual entry and possession or by written notice served personally upon or sent by certified mail to the last owner of the Secured Property appearing on the records of the Lender, as the Lender may elect, and no further authorization or notice shall be required.

WAIVER OF NOTICE. TO THE EXTENT PERMITTED BY LAW, OWNER WAIVES ANY RIGHT TO NOTICE, OTHER THAN THE NOTICE PROVIDED ABOVE, AND WAIVES ANY RIGHT TO ANY HEARING, JUDICIAL OR OTHERWISE, PRIOR TO THE LENDER EXERCISING ITS RIGHTS UNDER THIS ASSIGNMENT.

LENDER AS OWNER OF SECURED PROPERTY. It is mutually agreed that nothing contained in the Remedies and Additional Remedies above shall in any way diminish, restrict, or affect any rights of Lender under



the lease(s) referred to herein if Lender should become the owner of the Secured Property after the expiration of any redemption period in connection with any foreclosure proceedings.

SUBSEQUENT LEASES. Owner agrees to promptly inform Lender of, and to promptly transfer, assign and deliver to the Lender, any subsequent lease(s) of the Secured Property or any part thereof, and to make, execute and deliver to the Lender, upon demand, any and all documents, agreements and instruments as may, in Lender's opinion, be necessary to protect the Lender's rights under this Assignment. Owner's failure to comply with the agreements herein made shall not impair Lender's rights hereunder with respect to any such subsequent lease(s), nor shall such failure in any way affect the applicability of this Assignment to such lease(s) and the rentals receivable thereunder.

PROTECTION OF LENDER'S RIGHTS AND INTERESTS; NO WAIVER; DEFAULT. Owner further agrees to perform and discharge each and every obligation, covenant, and agreement required to be performed by the Landlord under the lease(s) referred to herein, and should Owner fail to do so, the Lender, without obligation to do so and without releasing Owner from any such obligation, may make or do the same in such manner and to such extent as the Lender deems necessary to protect its rights and interests under this Assignment. Nothing in this Assignment shall be construed to require the Lender to perform any of the terms and provisions contained in the lease(s), or otherwise to impose any obligation or liability upon the Lender. Neither the performance nor the nonperformance by the Lender of Owner's obligations shall be deemed a waiver of any default by the Owner under the Mortgage, this Assignment or under the Note(s). Owner agrees to indemnify and hold harmless Lender from all liability, loss, or damage, which may be incurred under the lease(s) or by reason of this Assignment. If Lender incurs any expenses due to performing Owner's obligations under the lease(s) and Assignment, or incurs damages, attorney fees or costs due to claims or demands under the lease(s) and Assignment, such amounts shall be payable on demand by Owner to Lender. Any default by Owner in the performance of any of the obligations in this Assignment shall be a default under the terms of the said Mortgage, entitling Lender to exercise all rights and remedies provided by the Mortgage, this Assignment, and under the Note(s).

LESSEE PAYMENTS TO LENDER. Owner irrevocably consents and agrees that any lessee(s) under any of the lease(s) referred to herein shall, upon demand and notice from Lender of Owner's default under said Note(s), Mortgage, or this Assignment, pay all rents, income, and profits under said lease(s) to Lender, without any obligation upon any such lessee(s) to determine the actual existence of any default by Owner.

LENDER ASSIGNMENT OF LEASE. Owner agrees that Lender shall have the right to assign Owner's right, title and interest in the lease(s) referred to herein to any subsequent holder of the Mortgage or Note(s) and to assign the same to any person acquiring title to the Secured Property through foreclosure.

SCOPE OF ASSIGNMENT OF LEASE AND RENTS. This Assignment extends to and includes every lease or rental agreement, whether written or unwritten, now existing or hereafter entered into, covering any part of the Secured Property. Wherever used herein, the term "lease" or "leases" includes all such rental agreements. If no specific lease is described above, then this Assignment shall be a general assignment of all leases and rental agreements concerning the Secured Property.

LENDER'S RIGHTS AND REMEDIES. The rights and remedies of the Lender under this Assignment are cumulative, and are not in lieu of, but are in addition to all other rights and remedies which Lender has under the Note(s), Mortgage, Loan Agreement and any related documents.

SUCCESSORS AND ASSIGN. All covenants and agreements contained in this Assignment shall apply to and bind the grantors, heirs, personal representatives, successors, and assigns of the respective parties.

ENTIRE AGREEMENT; MODIFICATIONS; SEVERABILITY. This Assignment shall constitute the entire agreement between Lender and Owner. Any modification of this Assignment shall be binding only if placed in writing and signed by the Lender and Owner. The invalidity of any provision of this Assignment shall not affect the validity of any other provision.



PARAGRAPH HEADINGS. The titles to the paragraphs of this Assignment are solely for the convenience of the parties and shall not be used to interpret this Assignment.

GOVERNING LAW. This Assignment shall be interpreted, and the rights of the parties determined, under the laws of the State of South Carolina.

ORAL AGREEMENTS DISCLAIMER. This Assignment represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

By signing this Assignment, Owner acknowledges reading, understanding, and agreeing to all its provisions.

CLEMSON ACADEMIC VENTURES, LLC

By: Thomas P Winkoff 12/30/08
Ex Member

By: James N Workman 12/30/08
Ex Member

By: William W Huss Jr 12/30/08
Ex Member

Witnessed by: Mary Beth 12/30/08
Name: _____ Date: _____

Witnessed by: Deanne Cate 12/30/08
Name: _____ Date: _____

BUSINESS ACKNOWLEDGMENT

STATE OF SOUTH CAROLINA }
COUNTY OF ANDERSON }

This instrument was acknowledged on the 30th day of December, 2008, by:

JAMES N WORKMAN, Member and WILLIAM W HUSS JR, Member of YAWNTO, LLC, and THOMAS P WINKOFF, Member on behalf of CLEMSON ACADEMIC VENTURES, LLC, a South Carolina Limited Liability Company, who personally appeared before me.

In witness whereof, I hereunto set my hand and official seal. Mary Beth
My commission expires: 12/31/2012

(Official Seal)

© 2004-2007 Deposition and Business Records, Inc. (D&B) 4019-1000-0002
Notary Public for South Carolina
www.dandb.com
DA 901-800-2825-201108
Notary Seal: Thomas P Winkoff

THIS INSTRUMENT PREPARED BY:
GREER STATE BANK
1111 WEST POINSETT STREET
GREER, SC 29650

AFTER RECORDING RETURN TO:
GREER STATE BANK
1111 WEST POINSETT STREET
GREER, SC 29650

© 2004-2007 Crystal Clearform Systems, Inc. 0001-06-001 - 001008-100
Registration of Instruments Form - 034601

Page 2 of 2

www.ccrystalclearform.com
800-663-0112 - Fax 810-510-1993

Title

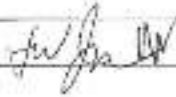


EXHIBIT A

PROPERTY DESCRIPTION

FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS

2008 DEC 10 P 12:15

All that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Oconee, being known and designated as 1 acre, more or less, as shown on a plat thereof entitled, "Survey for Clemson Academic Ventures, LLC", dated 9/23/08 and recorded in the Office of the Register of Deeds for Oconee in Plat Book B291, at Page 6, and having the metes and bounds, courses and distances as upon said plat appear.

This is the same property conveyed unto Clemson Academic Ventures, LLC by deed from High Pointe, LLC dated 12/08/08 and recorded in the Oconee County Register of Deeds in Deed Book 1695 at Page 254.

Prepared by and return to:
Alan M. Lipsitz, Esquire
Naxsen Pruet, LLC
1230 Main Street, Suite 700
Columbia, South Carolina 29201

2009 JAN -7 P 3 21



Doc ID: 001575610005 Type: PDF

EX 2693 PG 172-176

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

11.00
008161
08/28/08
08/28/08
29233

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS ("Assignment") is made this 6th day of January, 2009, by and from POINTE WEST, INC., a South Carolina corporation ("Assignor"), to and for BRANCH BANKING AND TRUST COMPANY, a North Carolina banking corporation, having a branch office in Anderson, South Carolina ("Assignee").

Assignor is the sole owner of that certain real property located in the City of Clemson, County of Oconee, State of South Carolina described in Exhibit "A" attached hereto and by this reference incorporated herein (the "Property") subject to that certain Mortgage dated as of even date herewith, conveyed by Assignor to Assignee and recorded concurrently herewith in the Office of the Register of Mesne Conveyances in Oconee County, South Carolina (the "Mortgage", as the same may be modified, or supplemented from time to time).

For good and valuable consideration, Assignor hereby absolutely assigns and transfers to Assignee: (a) the income, rents, (including, if applicable, all hotel room rents), receivables, security or similar deposits, revenues, issues, royalties, profits, earnings, products and proceeds from any and all of the Property (collectively, the "rents, issues and profits") together with the right, power and authority to collect the same; (b) all leases, written or oral, now in existence or hereafter arising, all other agreements for the use and occupancy of all or any portion of the Property, and any and all extensions or renewals of any thereof, (individually "Lease" and collectively, the "Leases"), together with the right, power and authority of Assignor to alter, modify or change the terms thereof, or surrender, cancel or terminate the same; and (c) any and all guarantees of any obligations of any lessee (the "lessee") under each of the leases. Assignor irrevocably appoints Assignee its true and lawful attorney-in-fact, at any time and from time to time, at the option of Assignee, to demand, receive and enforce payment of rent, to give receipts, releases and satisfactions, and to sue, in the name of Assignor or Assignee, for all the rents, issues and profits and to apply the same to the indebtedness secured, provided, however, that Assignor shall have the right and license to collect the rents, issues and profits prior to or at any time there is no default hereunder or under any Hedge Agreement (as defined herein) or any of the other loan documents evidencing and securing the Note ("Loan Documents"). The assignment of the rents, issues and profits in this Assignment is an absolute assignment from Assignor to Assignee and not merely the passing of a security interest.

This Assignment is made for the purpose of securing:

A. Payment of the principal sum, interest and indebtedness evidenced by those certain promissory notes each dated of even date herewith and payable to Assignee (including any amendments, extensions, renewals, or substitutions thereof, collectively the "Notes"), in the original principal sums of (i) Six Million One Hundred Ninety Thousand Four Hundred Seventy Five Dollars (\$6,190,475) made by Assignor; (ii) Three Million One Hundred Forty Five Thousand Dollars (\$3,145,000) made by High Pointe, LLC ("High Pointe"); (iii) Six Million Five Hundred Thousand Dollars (\$6,500,000) made by High Pointe; (iv) Seven Million Six Hundred Thousand Dollars (\$7,600,000) made by High Pointe; and (v) One Million Four Hundred Thousand Dollars (\$1,400,000) made by Harts Cove Development, LLC ("Harts Cove", and together with Assignor and High Pointe, individually, "Borrowers" and collectively, the "Borrowers").

B. All indebtedness and obligations of Assignor or any Borrower to Assignee (or an affiliate of Assignee) under any interest rate swap transactions, interest rate cap and/or floor transactions, interest rate collar transactions, swap agreements (as defined in 11 U.S.C. § 101) or other similar transactions or agreements, including without limitation any ISDA Agreement executed by Assignor or any Borrower and all Schedules and Confirmations entered into in connection therewith, hereinafter collectively referred to as a "Hedge Agreement", the terms of which are incorporated herein by reference.

C. The payment, performance and discharge of each and every obligation, covenant and agreement of Assignor or any Borrower contained herein or in the Loan Documents, or in any other obligation of Assignor or any Borrower to Bank, including without limitation the obligation to repay any draft or drawing on any Standby or Commercial Letter of Credit issued by Assignee on the account of Assignor or any Borrower pursuant to any Application and Agreement therefor ("Application"), and all costs of collection including reasonable attorney's fees as provided in the Note, any Hedge Agreement, Application or other Loan Documents.

The indebtedness and obligations described in A, B, and C above are hereinafter collectively referred to herein as the "Indebtedness".

ASSIGNOR WARRANTS to Assignee that Assignor is the sole owner of its entire interest, as Lessor, in the Leases; that the Leases are valid and enforceable and have not been altered, modified or amended in any manner whatsoever except as previously disclosed in writing to Assignee; that no lessee named therein is in default under any of the terms, covenants or conditions thereof, that no rent reserved in any Lease has been assigned or anticipated, that no rent for any period subsequent to the date of this Assignment has been collected more than one month in advance of the

time when the same became due under the terms of any Lease; that it has full right and title to assign the Leases and all rents, issues and profits thereunder; and no other assignment of any interest therein has been made.

ASSIGNOR COVENANTS AND AGREES with Assignee to observe and perform all obligations imposed under the Leases; to give prompt notice to Assignee of any notice of default under any Leases received or given by Assignor together with a complete copy of any such notice; at the sole cost and expense of Assignor, to enforce, short of termination of any Lease, the performance or observance of each and every covenant and condition thereof by all parties thereto; and not to do or permit to be done anything to impair the security thereof; not to pay or collect any of the rent, issues and profits arising or accruing under the Leases or from the Property in advance of the time when the same shall become due; not to execute any other assignment of interest in the Leases or assignment of rents arising or accruing from the Leases or from the Property; not to subordinate any Lease to any other encumbrance or permit, consent or agree to such subordination without Assignee's prior written consent; not to alter, modify or change the terms of any Lease or give any consent or exercise any option required or permitted by such terms without the prior written consent of Assignee or cancel or terminate any Lease or accept a surrender thereof or convey or transfer or suffer or permit a conveyance or transfer of the leased premises thereby or of any interest therein so as to effect, directly or indirectly, a merger of the estates and rights of, or a termination or diminution of the obligations of, any party thereunder; not to alter, modify or change the terms of any guaranty of any Lease or cancel or terminate such guaranty without the prior written consent of Assignee; not to consent to any assignment of or subletting under any Lease, whether or not in accordance with its terms, without the prior written consent of Assignee; at Assignee's request to assign and transfer to Assignee any and all subsequent leases upon all or any part of the Property and to execute and deliver at the request of Assignee all such further assurances and assignments in the Property as Assignee shall from time to time require.

THIS ASSIGNMENT is made on the following additional terms, covenants and conditions:

1. At any time and for any reason Assignor shall have the right and obligation to collect and receive at the time of but not prior to, the date provided for the payment thereof, all rents, issues and profits arising under the Leases. Upon the occurrence of an event of default hereunder or under the Loan Documents, Assignee may, at its option, without notice and without regard to the adequacy of the security for the indebtedness, either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, take possession of the Property described in any Lease or in the Mortgage and have, hold, manage, lease and operate the same on such terms and for such period of time as Assignee may deem proper and either with or without taking possession of such Property in its own name, demand, sue for or otherwise collect and receive all rents, issues and profits of the Property or pay the same including those past due and unpaid with full power to make from time to time all alterations, renovations, repairs or replacements thereof or thereof as may seem proper to Assignee, and to apply any such collected rents, issues and profits to the payment of: (a) all expenses of managing the Property, including, without being limited thereby, the salaries, fees and wages, of a managing agent and such other employees as Assignee may deem necessary or desirable, and all expenses of operating and maintaining the Property, including, without being limited thereby, all taxes, charges, claims, assessments, water rents, sewer rents and any other rents and premiums for all insurance which Assignee may deem necessary or desirable, the costs of all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Property; and (b) the indebtedness together with all costs and attorneys' fees, in such order of priority as to any of the items mentioned in this paragraph, as Assignee in its sole discretion may determine, any statute, law, custom or use to the contrary notwithstanding. The exercise by Assignee of the option granted it in this paragraph and the collection of the rents, issues and profits and the application thereof as herein provided shall not be considered a waiver of any default by Assignor under this Assignment, the Note, the Mortgage Agreement, any Application, the Mortgage, or any Lease.

2. Assignee shall not be liable for any loss sustained by Assignor resulting from any act or omission of Assignee or from managing the Property unless such loss is caused by the willful misconduct or gross negligence of Assignee. Assignee shall not be obligated to perform or discharge, nor does Assignee hereby undertake to perform or discharge, any obligation, duty or liability under any Lease or under or by reason of this Assignment, and Assignor shall, and does hereby agree, to indemnify Assignee for, and to hold Assignee harmless from, any and all liability, loss or damage which may or might be incurred under any Lease or under or by any reason of this Assignment, and from any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any Lease. Should Assignee incur any such liability under any Lease or under or by reason of this Assignment or in defense of any such claims or demands, the amount thereof, including costs, expenses and a reasonable attorneys' fees shall be secured hereby and Assignor shall reimburse Assignee therefor immediately upon demand, and upon the failure of Assignor to do so, Assignee may, at its option, declare the indebtedness immediately due and payable. This Assignment shall not operate to place responsibility for the control, care, management or repair of the Property or any portion thereof upon Assignee, nor for the carrying out of any of the terms and conditions of any Lease, nor shall it operate to make Assignee responsible or liable for any waste committed on the Property by any parties, or for any dangerous or defective condition of the Property or any portion thereof or for any negligence of Assignor or its agents in the management, upkeep, repair or control of the Property or any portion thereof resulting in loss or injury or death to a tenant, licensee, employee or stranger.

3. Assignee shall have the right to assign Assignor's right, title and interest in the Leases to any subsequent holder of the Mortgage subject to the provisions of this Assignment, and to assign the same to any person acquiring title to the Property through foreclosure or otherwise. After Assignor shall have been barred and foreclosed of all right, title and interest and equity of redemption in the Property no Assignee of Assignor's interest in the Leases shall be liable to account to Assignor for the rents, issues and profits thereafter accruing.

4. Upon payment and performance in full of the indebtedness, this Assignment shall become and be void and of no effect, but the affidavit, certificate, or other statement of any officer, agent or attorney of Assignee showing any part of

the Indebtedness to remain unpaid or unperformed shall be and constitute conclusive evidence of the validity, effectiveness, and continuing force of this Assignment and any person may and is hereby authorized to, rely thereon. Assignor, as the lessor under any Lease, hereby authorizes and directs the lessee named in any such Lease or any other or future lessee or occupant of the Property described therein upon receipt from Assignee of written notice that Assignee is then the holder of the Note to pay over to Assignee all rents, issues, and profits arising or accruing under such Leases or from the Property and to continue so to do until otherwise notified by Assignee.

5. Assignee may take or release other security for the payment of the Indebtedness may release any party primarily or secondarily liable therefor and may apply any other security held by it to the satisfaction of the Indebtedness without prejudice to any of its rights under this Assignment.

8. Nothing contained in this Assignment and no act done or omitted by Assignee pursuant to the powers and rights granted it hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under the Loan Documents and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Assignee under the terms of the Loan Documents. The right of Assignee to collect the Indebtedness and to enforce any other security therefor held by it may be exercised by Assignee either prior to, simultaneously with, or subsequent to any action taken by it hereunder.

7. Assignor hereby assigns to Assignee any portion of an award payable by reason of condemnation action under the right of eminent domain, and directs that such award shall be paid directly to Assignee.

9. Any guaranty of payment and performance of any Lease shall not be released, modified, or limited in any manner without the prior written consent of Assignee.

9. This Assignment is made, as stated and delivered in the State of South Carolina and shall be governed by the laws of the State of South Carolina. Each provision of this Assignment shall be interpreted in such a manner as to be effective and valid under the applicable law, but if any provision hereof shall be prohibited by or invalid under the applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Assignment.

10. In case of any conflict between the terms of this instrument and the terms of the Mortgage, the terms of this Assignment shall control.

11. **WAIVER OF TRIAL BY JURY.** UNLESS EXPRESSLY PROHIBITED BY APPLICABLE LAW, THE UNDERSIGNED HEREBY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY MATTERS OR CLAIMS ARISING OUT OF THIS ASSIGNMENT OR ANY LOAN DOCUMENT EXECUTED IN CONNECTION HERewith OR OUT OF THE CONDUCT OF THE RELATIONSHIP BETWEEN THE UNDERSIGNED AND ASSIGNEE. THIS PROVISION IS A MATERIAL INDUCEMENT FOR ASSIGNEE TO MAKE THE LOAN SECURED BY THIS ASSIGNMENT. FURTHER, THE UNDERSIGNED HEREBY CERTIFY THAT NO REPRESENTATIVE OR AGENT OF ASSIGNEE, NOR ASSIGNEE'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT ASSIGNEE WOULD NOT SEEK TO ENFORCE THIS WAIVER OF TRIAL BY JURY TRIAL PROVISION IN THE EVENT OF LITIGATION. NO REPRESENTATIVE OR AGENT OF ASSIGNEE, NOR ASSIGNEE'S COUNSEL, HAS THE AUTHORITY TO WAIVE, CONDITION OR MODIFY THIS PROVISION.

THIS ASSIGNMENT, together with the covenants and warranties herein contained, shall inure to the benefit of Assignee and any subsequent holder of the Note and Mortgage and shall be binding upon Assignor, its successors and assigns and any subsequent owner of the Property.

IN WITNESS WHEREOF, Assignor has hereunto set his hand and seal, or caused this Assignment to be executed by its duly authorized officer(s), director(s), manager(s) or managing member(s), this the day first above shown.

Witness: 

POINTE WEST, INC.

By: 
President

STATE OF SOUTH CAROLINA }
COUNTY OF PICKENS }
}

ACKNOWLEDGMENT

I, Christopher Golson, a notary public for South Carolina, do hereby certify that William W. West, Jr., the President of Pointe West, Inc., a South Carolina corporation, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal (where an official seal is required by law) official seal this 12th day of January, 2009.

 (SEAL)

Signature of Notary Public

My Commission Expires: 12-19-2012

EXHIBIT A

(Here set forth the entire legal description of the Property covered by the Mortgage granted by Assignor to Assignee.)

All that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Oconee, being known and designated as 219.51 acres, more or less, including all easements, as shown on a plat thereof entitled, "Survey for Pointe West, Inc.", dated 5/27/08, revised 8/13/08, revised 9/3/08, revised 1/5/09 and recorded in the Office of the Register of Deeds for Oconee in Plat Book 6245, at Page 283, and having the metes and bounds, courses and distances as upon said plat appear.

Together with all rights under easements recorded in Book 1668, Page 203 and Book 1668, Page 204.

This being a portion of the same property conveyed unto Pointe West, LLC by deed from WP Properties of Clemson, LLC dated 12/17/07 and recorded in Deed Book 1634, page 264 records of Oconee County, South Carolina.

FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS
JAN 11 10 3 21

The Mortgagor covenants that it is lawfully seized of the premises herein above described in fee simple absolute, that Mortgagor has good, right, and lawful authority to sell, convey, or encumber the same, and that the premises are free and clear of all liens and encumbrances whatsoever except as listed in the title opinion or title insurance policy which Mortgagee has obtained in the transaction which Mortgagor obtained this Mortgage. The Mortgagor further covenants to warrant and forever defend title to the premises as then conveyed into the Mortgage, from and against all persons whatsoever lawfully claiming the same or any part thereof.

The Mortgagor covenants and agrees as follows:

1. That Mortgagor will cause the Borrower to promptly pay the principal of and interest on the indebtedness evidenced by the Note and any subsequent note or agreement evidencing additional advances, in the time and in the manner therein provided. Mortgagor shall timely pay and perform any obligation, covenant or warranty contained not only in this Mortgage but also any other mortgage, or writing which gives rise to, or which may constitute a lien upon any of the Property. Upon request of Mortgagee, Mortgagor promptly shall furnish satisfactory evidence of such payment or performance. Mortgagor shall not enter into, terminate, cancel or amend any material lease or contract affecting the Property or any part thereof without the prior written consent of the Mortgagee.

2. That the lien of this instrument shall remain in full force and effect during any postponement or extension of the time of payment of or any other modification relating to the indebtedness or any part thereof secured hereby (sometimes hereinafter collectively referred to as the "Debt").

3. That Mortgagor will pay as they become due all mortgage loan insurance premiums, taxes, assessments, water rates, and other governmental or municipal charges, fines or impositions, assessed against the Property hereby mortgaged. If the Mortgagor fails to make any payments provided for in this section or any other payments for taxes, assessments, or the like, the Mortgagee may pay the same, and all sums so paid shall bear interest at the same rate as the principal debt secured hereby (from the date of such advance) and shall be secured by this Mortgage. Any award for the taking of, or damages to, all or any part of the Property or any interest therein upon the lawful exercise of the power of eminent domain shall be payable solely to Mortgagee, which may apply the sums so received to payment of the Debt.

4. That Mortgagor will keep the Property in as good order and condition as it is now, reasonable wear and tear excepted, and will not commit or permit any waste thereof. Mortgagee may at any reasonable time and from time to time make or cause to be made reasonable entries upon, investigations, and inspections of the Property, including without limitation any inspections or investigations such as sampling and testing which may be necessary or desirable to review compliance with Environmental Laws.

5. That Mortgagor will produce and continuously maintain fire and such other hazard insurance as the Mortgagee may require on the improvements which form a part of the Property, now or hereafter on the Property, and will pay promptly when due any premiums therefor. If Mortgagor fails to do so, the Mortgagee may cause the same to be done and reimburse itself for such premiums and expenses, and the same shall be secured by this Mortgage. All insurance shall be carried in companies approved by the Mortgagee and the policies and renewals thereof shall be held by the Mortgagee and have attached thereto loss payable clauses (including New York long form) in favor of and in favor acceptable to the Mortgagee. In event of loss, Mortgagor will give immediate notice by mail to the Mortgagee, who may make proof of loss if not made promptly by the Mortgagor, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to the Mortgagee and Mortgagee jointly, and the insurance proceeds, or any part thereof, may be applied by the Mortgagee in its option either to the reduction of the indebtedness hereby secured or to the restoration of the property damaged.

6. That Mortgagee hereby assigns all the rents, issues, and profits of the Property from and after any default hereunder, and should legal proceedings be instituted pursuant to this instrument, then the Mortgagee shall have the right to have appointed a receiver of the rents, issues, and profits, who, after deducting all charges and expenses attending such proceedings and the execution of his trust as receiver, shall apply the residue of the rents, issues, and profits toward the payment of the debt secured hereby. Mortgagor hereby appoints Mortgagee as Mortgagor's attorney-in-fact to collect any rents and profits, with or without suit, and to apply the same, less expenses of collection to any indebtedness owing under the Note in any manner as Mortgagor may desire. All the fixtures and equipment that comprise a part of the Property shall, as far as permitted by law, be deemed to be affixed to the aforesaid land and conveyed therewith. As to the balance of the fixtures, this Mortgage shall be considered to be a security agreement that creates a security interest in such fixtures for the benefit of Mortgagee. In that regard, Mortgagee shall have all of the rights and remedies of a secured party under the South Carolina Uniform Commercial Code. Mortgagor hereby authorizes Mortgagee to file all UCC Financing Statements and other documents reasonably required to perfect and maintain the security interest created hereby. However, to the extent allowed by law, this Mortgage shall be a financing statement sufficient to perfect and maintain any security interest created hereby in the Property and its proceeds.

7. That Mortgagor will pay or caused to be paid as they become due the principal and interest on all notes, obligations, contracts or agreements, secured by any mortgage, lien, or security interest having priority over this Mortgage as to the Property

disclosed herein. If the Mortgagor fails to make any of the payments as provided in this section, Mortgagee may pay the same and add any amounts so paid to the principal debt of Borrower, and all sums so paid shall bear interest at the same rate as the principal debt secured hereby and shall be secured by this Mortgage.

8. Mortgagor for itself, its successors, and assigns represents, warrants and agrees that (a) neither Mortgagor nor any other person has used or installed any Hazardous Material (as hereinafter defined) on the Property or received any notice from any governmental agency, entity or other person with regard to Hazardous Materials on, from or affecting the Property; (b) neither Mortgagor or any other person has violated any applicable Environmental Laws (as hereinafter defined) relating to or affecting the Property; (c) the Property is presently in compliance with all Environmental Laws; there are no circumstances presently existing upon or under the Property, or relating to the Property which may violate any applicable Environmental Laws, and there is not now pending, or threatened, any action, suit, investigation or proceeding against Mortgagor relating to the Property (or against any other party relating to the Property) seeking to enforce any right or remedy under any of the Environmental Laws; (d) the Property shall be kept free of Hazardous Materials, and shall not be used to generate, manufacture, transport, treat, store, handle, dispose, or process Hazardous Materials; (e) Mortgagor shall not cause nor permit the installation of Hazardous Materials in the Property nor a release of Hazardous Material onto or from the Property or suffer the presence of Hazardous Materials on the Property; (f) Mortgagee shall at all times comply with and ensure compliance by all other parties with all applicable Environmental Laws relating to or affecting the Property and shall keep the Property free and clear of any liens imposed pursuant to any applicable Environmental Laws; (g) the Mortgagor has obtained and will at all times continue to obtain and/or maintain all licenses, permits and/or other governmental or regulatory actions necessary to comply with Environmental Laws (the "Permits") and the Mortgagor is in full compliance with the terms and provisions of the Permits and will continue to comply with the terms and provisions of the Permits; (h) Mortgagor shall immediately give the Mortgagee oral and written notice in the event that Mortgagor receives any notice from any governmental agency, entity, or any other party with regard to Hazardous Materials on, from or affecting the Property and shall conduct and complete all investigations, sampling, and testing, and all removal, removal, and other actions necessary to clean up and remove all Hazardous Materials on, from or affecting the Property in accordance with all applicable Environmental Laws. The Mortgagor hereby agrees to indemnify the Mortgagee and hold the Mortgagee harmless from and against any and all losses, liabilities, damages, injuries (including, without limitation, attorney's fees) and claims of any and every kind whatsoever, incurred or suffered by, or asserted against Mortgagee for, with respect to, or as a direct or indirect result of (a) the presence, on, or under, or the escape, spillage, emission or release from the Property of any Hazardous Material regardless of whether or not caused by or within the control of Mortgagor, (b) the violation of any Environmental Laws relating to or affecting the Property, whether or not caused by or within the control of Mortgagor, (c) the failure by Mortgagor to comply fully with the terms and provisions of this paragraph, or (d) any warranty or representation made by Mortgagor in this paragraph being false or untrue in any material respect. For purposes of this Mortgage, "Hazardous Material" means and includes petroleum products, any flammable explosives, radioactive materials, asbestos or any material containing asbestos, and/or any hazardous, toxic or dangerous waste, substance or material defined as such in (or for the purpose of) the Environmental Laws. For the purpose of this Mortgage, "Environmental Laws" means the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, any "Super Fund" or "Super Lien" law, or any other federal, state, or local law, regulation, or decree regulating, relating to, or imposing liability or standards of conduct concerning any petroleum products, any flammable explosives, radioactive materials, asbestos or any material containing asbestos, and/or any hazardous, toxic or dangerous waste, substance or material, as may now or at any time hereafter be in effect. The obligations and liabilities of Mortgagor under this paragraph shall survive the foreclosure of the Mortgage, the delivery of a deed in lieu of foreclosure, the cancellation or release of record of this Mortgage or the payment and cancellation of the Note, or if otherwise expressly permitted in writing by the Mortgagee, the sale or alienation of any part of the Property.

9. That in the event that Mortgagor or Borrower shall default in its obligations under this Mortgage, the Note, or other Loan Documents, and Mortgagee employs an attorney to assist in the collection of the Debt or to enforce compliance of Mortgagor with any of the provisions of this Mortgage, the Note, or other Loan Documents, or in the event Mortgagee shall become party to any suit or legal proceeding (including any proceeding conducted before any United States Bankruptcy Court) concerning the Property, concerning the lien of this Mortgage, concerning collection of the Debt, or concerning compliance by Mortgagor or Borrower with any of the provisions of this Mortgage, the Note, or other Loan Documents, Mortgagor shall pay Mortgagee's reasonable attorneys' fees and all of the costs that may be incurred, and such fees and costs shall be secured by this Mortgage and its payment enforced as if it were a part of the Debt. Mortgagor shall be liable for such attorneys' fees and costs whether or not any suit or proceeding is commenced.

10. That to the extent permitted by law, Mortgagee may grant releases at any time and from time to time of all or any portion of the Property (whether or not such releases are required by agreement among the parties) agreeable to Mortgagee without notice to or the consent, approval or agreement of other parties and interests, including junior lienors and purchasers subject to the lien of this Mortgage, and such releases shall not impair in any manner the validity of or priority of this Mortgage on that portion of the Property

remaining subject to this Mortgage, nor release Mortgagee from personal liability for the Debt. Notwithstanding the existence of any other security interests in the Property held by Mortgagee or by any other party, Mortgagee shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies available to Mortgagee, and Mortgagee shall further have the right to determine the order in which any or all portions of the Debt are satisfied from the proceeds realized upon the exercise of any remedy it has. Mortgagee, or any party who consents to this, or any party who has actual or constructive notice hereof, hereby waives any and all rights to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

11. This Mortgage shall be in default under this Mortgage upon the occurrence of any of the following:

(a) Default in the payment or performance of any of the obligations, or of any covenant or warranty, in this Mortgage, in the Note, or other document executed in connection herewith, or in any other note of Mortgagee or Borrower to Mortgagee or any contract between Mortgagee or Borrower and Mortgagee, or in any contract between any third party and Mortgagee made for the benefit of Mortgagee, or

(b) Any warranty, representation or statement made or furnished to Mortgagee by or on behalf of Mortgagee or Borrower in connection with this transaction proving to have been false in any material respect when made or furnished; or

(c) Loss, theft, substantial damage, destruction to or of the Property, or the assertion or making of any levy, seizure, mechanic's or materialman's lien or attachment thereof or thereon; or

(d) Death, dissolution, termination of existence, insolvency, business failure, appointment of a Receiver for any part of the property of, assignment for the benefit of creditors by, filing of a bankruptcy petition by or against, or the inability to pay debts in the ordinary course of business of the Mortgagee, Borrower or any co-maker, endorser, guarantor or surety for Mortgagee or Borrower; or

(e) Failure of a corporate Mortgagee, Borrower or co-maker, endorser, guarantor or surety for Mortgagee to maintain its corporate existence in good standing; or

(f) Upon the entry of any monetary judgment of the assessment or filing of any tax lien against Mortgagee or Borrower or upon the issuance of any writ of garnishment or attachment against any property, debts due or rights of Mortgagee or Borrower; or

(g) The sale (including sale by land contract upon delivery of possession), transfer or encumbrance of all or any part of the Property or any interest therein, or any change in the ownership or control of any corporate or partnership Mortgagee, or Borrower, without Mortgagee's prior written consent; or

(h) If Mortgagee should otherwise deem itself, its security interest, the Property or the indebtedness evidenced by the Note unsafe or insecure; or should Mortgagee otherwise believe that the prospect of payment or other performance is impaired.

12. That the Mortgagee shall hold and enjoy the premises above conveyed until there is a default under this Mortgage or in the Note secured hereby. If there is a default in any of the terms, conditions or covenants of this Mortgage or of any of the Notes secured hereby, then at the option of the Mortgagee, and without prior notice to the Mortgagee, all sums then owing by the Mortgagee, or any Borrower or any other obligor on the Notes to the Mortgagee shall become immediately due and payable, the Mortgagee may in addition pursue all other rights and remedies available against the Mortgagee, Borrower or any other obligor under the Notes under applicable provisions of South Carolina Law and of any other law governing the Notes. This Mortgage shall remain as security for full payment of all indebtedness evidenced by the Notes and for performance of any obligation evidenced by the Notes or any document executed in connection therewith, notwithstanding the sale or release of any or all of the Property, the assumption by another party of Mortgagee's obligations under the Note or this Mortgage, the forbearance or extension of time or payment of the indebtedness evidenced by the Note or any one of same or the release of any party who has assumed or incurred any obligation for the repayment of the indebtedness evidenced by the Note and secured by this Mortgage. None of the foregoing shall in any way affect the full force and effect of the lien of this Mortgage or impair the Mortgagee's right to any other remedies against the Mortgagee, Borrower or any other obligor under the Note. Any forbearance by the Mortgagee in exercising any right or remedy hereunder or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Mortgagee shall not be a waiver of Mortgagee's right to accelerate maturity of the indebtedness evidenced by the Notes secured hereby. Time is of the essence the payment or performance of any of the obligations, or of any covenant or warranty contained in this Mortgage, or in the Note or any other document related thereto.

13. That upon default hereunder, along with other remedies set out herein and in the above referenced Note, the Mortgagee may foreclose upon the mortgaged premises and ask for a deficiency judgment pursuant to §29-3-660 of the South Carolina Code of Laws (1977). Mortgagee hereby expressly waives and relinquishes any appraisal rights which Mortgagee may have under §29-3-680 et seq. South Carolina Code of Laws (1977), as amended, and understands and agrees that a deficiency judgment, if pursued by Mortgagee, shall be determined by the highest priced bid at the judicial sale of the Property. In the event that Mortgagee voluntarily or otherwise shall become parties to any suit or legal proceeding involving the Property, it shall be severally harmless and shall be reimbursed by Mortgagee for any amounts paid, including all costs, charges and attorney's fees incurred in any such suit or proceeding, and the same shall be secured by this Mortgage and payable upon demand.

14. That the covenants herein contained shall bind, and the benefits and advantages shall inure to, the respective heirs, executors, administrators, successors, and assigns of the parties hereto. Whenever used, the singular number shall be applicable to all genders and the term "Mortgagee" shall include any payee of the indebtedness hereby assumed or any transferee thereof whether by operation of law or otherwise. The liability of the Mortgagor hereunder shall, if more than one, be joint and several. The designations "corporate", "corporation", and "partnership" include limited liability companies and limited liability partnerships.

15. WAIVER OF TRIAL BY JURY. UNLESS EXPRESSLY PROHIBITED BY APPLICABLE LAW, THE UNDERSIGNED HEREBY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY MATTERS OR CLAIMS ARISING OUT OF THIS MORTGAGE OR ANY LOAN DOCUMENT EXECUTED IN CONNECTION HEREWITH OR OUT OF THE CONDUCT OF THE RELATIONSHIP BETWEEN THE UNDERSIGNED AND MORTGAGEE. THIS PROVISION IS A MATERIAL INDUCEMENT FOR MORTGAGEE TO MAKE THE LOAN SECURED BY THIS MORTGAGE. FURTHER, THE UNDERSIGNED HEREBY CERTIFY THAT NO REPRESENTATIVE OR AGENT OF MORTGAGEE, NOR MORTGAGEE'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT MORTGAGEE WOULD NOT SEEK TO ENFORCE THIS WAIVER OR RIGHT TO JURY TRIAL PROVISION IN THE EVENT OF LITIGATION. NO REPRESENTATIVE OR AGENT OF MORTGAGEE, NOR MORTGAGEE'S COUNSEL, HAS THE AUTHORITY TO WAIVE, CONDITION OR MODIFY THIS PROVISION.

Waiver of Appraisal Rights. The Laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. **TO THE FULLEST EXTENT PERMITTED BY LAW AND AS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN, MORTGAGOR HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.**

IN WITNESS WHEREOF, each Mortgagor has executed this Mortgage the day and year first above written.

Signed, sealed and delivered in the presence of:

Signed, sealed and delivered in the presence of:

MORTGAGOR:

Diann M. Earle (SEAL)

C. J. [Signature] (SEAL)

Diann M. Earle (SEAL)

C. J. [Signature] (SEAL)

[Signature] (SEAL)
James Neal Workman

Gay W. Workman (SEAL)
Gay W. Workman

STATE OF SC
COUNTY OF Pickens

ACKNOWLEDGMENT

Christopher G Olson, a notary public for SC, do hereby certify that each of 2005 Neal Workman and Fay W. Workman personally appeared before me this day and acknowledged the true execution of the foregoing instrument.

Witness my hand and seal (when an official seal is required by law) official seal this 31 day of December, 2011.

Christopher G Olson Diane H. [Signature] (SEAL)
Signature of Notary Public
My Commission Expires 12-19-2012

2011 DEC 31 12:12:34
CHRISTOPHER G. OLSON
NOTARY PUBLIC
PICKENS COUNTY, SC

EXHIBIT A

Legal Description

That certain piece, parcel or lot of land with improvements thereon, situate, lying and being in the State of South Carolina, County of Oconee, Town of Wallhalla, containing 2.274 acres, more or less, as shown and delineated upon a plat of survey prepared by Wayne R. Garland, P.L.S., dated April 10, 1987, and recorded in Plat Book P-54 at Page 400, records of Oconee County, South Carolina, to which said plat reference is craved for a more particular description thereof.

Derivation: This being the same property conveyed unto James Neal Workman and Fay W. Workman by deed from Anne Darby Mahaffey dated 2/1/88, recorded 2/14/88 in the Office of the Registrar of Deeds for Oconee County, South Carolina in Book 525, at Page 233.

TMS #: 508-19-11-007

RECORDED
OCONEE COUNTY, SOUTH CAROLINA
PLAT BOOK P-54 PAGE 400
1987 APR 10

STATE OF SOUTH CAROLINA)
)
COUNTY OF GOODEE)

BB&T

Doc ID: 000117/0008 Type: MTO
BK 2831 PG 61-68

MORTGAGE OF REAL ESTATE

THIS MORTGAGE OF REAL ESTATE (this "Mortgage"), made this 31st day of December, 2009, by YAWNIV, L.L.C, a South Carolina limited liability company (hereinafter referred to as "Mortgagor"), granted and given to BRANCH BANKING AND TRUST COMPANY (hereinafter referred to as "Mortgagee"), a corporation organized and existing under the laws of the State of North Carolina, whose address is P.O. Box 1290, Whiteville, NC 28472.

WHEREAS, High Frame, L.L.C, a South Carolina limited liability company ("Borrower"), is indebted to Mortgagee as evidenced by a certain Promissory Note dated of even date herewith, executed in favor of Mortgagee in the principal sum of Two Million and 00/100 Dollars (\$2,000,000.00) (the "Note"), and any renewals, extensions or modifications to such Note, the terms of which are incorporated herein by reference. Where used herein, the term "Note" or "Notes" shall be deemed to include the note above described, along with any other notes, additional advance agreements, or other documents now or hereafter evidencing any debt whatsoever incurred by Mortgagor or Borrower and payable to Mortgagee, including without limitation all indebtedness and obligations of the Mortgagor or Borrower to Mortgagee (or an affiliate of Mortgagee) under any interest rate swap transactions, interest rate cap and/or floor transactions, interest rate collar transactions, swap agreements (as defined in U.S.C. § 101) or other similar transactions or agreements, including without limitation any ISDA Master Agreement executed by Mortgagor or any Borrower and all schedules and confirmations entered into in connection therewith, hereinafter collectively referred to as a "Hedge Agreement", the terms of which are incorporated herein by reference.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that the Mortgagor, for and in consideration of the aforesaid indebtedness and in order to secure the payment thereof together with any renewals or extensions or modifications thereof, and also to secure in accordance with § 29-3-50, as amended, of the Code of Laws of South Carolina (1976) or any such successor statute as may apply:

1. All future advances and readvances that may subsequently be made to the Mortgagor or Borrower evidenced by the Note and by all renewals and extensions thereof; and
2. All other indebtedness of Mortgagor or Borrower to Mortgagee, now or hereafter existing, whether direct or indirect, including without limitation any advances made by Mortgagee to pay drawings on any irrevocable standby or commercial letter of credit issued on the account of the Mortgagor or any Borrower pursuant to an application therefor, the MAXIMUM AMOUNT OF ALL INDEBTEDNESS OUTSTANDING AT ANY ONE TIME SECURED HEREBY NOT TO EXCEED \$4,000,000 plus interest thereon, all charges and expenses of collection incurred by Mortgagee including court costs and reasonable attorneys' fees, has granted, bargained, sold, assigned, released and does by these presents grant, bargain, sell, assign and release unto the Mortgagee, its successors and assigns the following described property:

See Exhibit A attached hereto and incorporated herein

Together with all and singular improvements thereon and the rights, members, hereditaments and appurtenances to the same belonging or in any way appertaining; all the rents, issues, and profits thereof (provided, however that, unless otherwise agreed, the Mortgagor shall be entitled to collect and retain the said rents, issues, and profits until default hereunder); and including all heating, plumbing, and lighting fixtures and equipment now or hereafter attached to or used in connection with the real estate herein described (herein collectively the "Property").

TO HAVE AND TO HOLD, all the said Property unto the Mortgagee, its successors and assigns forever.

The Mortgagor covenants that it is lawfully seized of the premises herein above described in fee simple absolute, that Mortgagor has good, right, and lawful authority to sell, convey, or encumber the same, and that the premises are free and clear of all liens and encumbrances whatsoever except as listed in the title opinion or title insurance policy which Mortgagee has obtained in the transaction

Let Olson em
P.O. Box 1633
Clemson SC 29633
1400

007569

Page 1 RE 21 d 1E 338 603
5000 10 85100
75 11 16 20 3 20
020079 40 1 2 2010

MP00110700924CR4LAB(09)E3(000)

in which Mortgagee obtained this Mortgage. The Mortgagor further covenants to warrant and forever defend title to the premises so herein conveyed unto the Mortgagee, from and against all persons whatsoever lawfully claiming the same or any part thereof.

The Mortgagee covenants and agrees as follows:

1. That Mortgagee will cause the Borrower to promptly pay the principal of and interest on the indebtedness evidenced by the Note and any subsequent note or agreement evidencing additional advances, at the time and in the manner therein provided. Mortgagee shall timely pay and perform any obligation, covenant or warranty contained not only in this Mortgage but also any other mortgage, or writing which gives rise to, or which may constitute a lien upon any of the Property. Upon request of Mortgagee, Mortgagor promptly shall furnish satisfactory evidence of such payment or performance. Mortgagor shall not enter into, terminate, cancel, or amend any material lease or contract affecting the Property or any part thereof without the prior written consent of the Mortgagee.

2. That the lien of this instrument shall remain in full force and effect during any postponement or extension of the time of payment of or any other modification relating to the indebtedness or any part thereof secured hereby (sometimes hereinafter collectively referred to as the "Debt").

3. That Mortgagee will pay as they become due all mortgage loan insurance premiums, taxes, assessments, water rates, and other governmental or municipal charges, fines or imposition, assessed against the Property hereby mortgaged. If the Mortgagor fails to make any payments provided for in this section or any other payments for taxes, assessments, or the like, the Mortgagee may pay the same, and all sums so paid shall bear interest at the same rate as the principal debt secured hereby (from the date of such advance) and shall be secured by this Mortgage. Any award for the taking of, or damages to, all or any part of the Property or any interest therein upon the lawful exercise of the power of eminent domain shall be payable solely to Mortgagee, which may apply the sums so received to payment of the Debt.

4. That Mortgagee will keep the Property in as good order and condition as it is now, reasonable wear and tear excepted, and will not commit or permit any waste thereof. Mortgagee may at any reasonable time and from time to time make or cause to be made reasonable entries upon, investigations, and inspections of the Property, including without limitation any inspections or investigations such as sampling and testing which may be necessary or desirable to review compliance with Environmental Laws.

5. That Mortgagee will produce and continuously maintain fire and such other hazard insurance as the Mortgagee may require on the improvements which form a part of the Property, now or hereafter on the Property, and will pay promptly when due any premiums therefor. If Mortgagor fails to do so, the Mortgagee may cause the same to be done and reimburse itself for such premiums and expenses, and the same shall be secured by this Mortgage. All insurance shall be carried in companies approved by the Mortgagee and the policies and renewals thereof shall be held by the Mortgagee and have attached thereto loss payable clauses (including New York long form) in favor of and in form acceptable to the Mortgagee. In event of loss, Mortgagee will give immediate notice by mail to the Mortgagor, who may make proof of loss if not made promptly by the Mortgagee, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to the Mortgagee and Mortgagee jointly, and the insurance proceeds, or any part thereof, may be applied by the Mortgagee at its option either to the reduction of the indebtedness hereby secured or to the restoration of the property damaged.

6. That Mortgagee hereby assigns all the rents, issues, and profits of the Property from and after any default hereunder, and should legal proceedings be instituted pursuant to this instrument, then the Mortgagee shall have the right to have appointed a receiver. The rents, issues, and profits, when, after deducting all charges and expenses attending such proceedings and the execution of his trust receiver, shall apply the residue of the rents, issues, and profits toward the payment of the debt secured hereby. Mortgagee hereby appoints Mortgagee as Mortgagor's attorney-in-fact to collect any rents and profits, with or without suit, and to apply the same, less expenses of collection to any indebtedness owing under the Note in any manner as Mortgagee may desire. All the fixtures and equipment that comprise a part of the Property shall, as far as permitted by law, be deemed to be affixed to the aforesaid land and conveyed therewith. As to the balance of the fixtures, this Mortgage shall be considered to be a security agreement that creates a security interest in such fixtures for the benefit of Mortgagee. In that regard, Mortgagee shall have all of the rights and remedies of a secured party under the South Carolina Uniform Commercial Code. Mortgagor hereby authorizes Mortgagee to file all UCC Financing Statements and other documents reasonably required to perfect and maintain the security interest created hereby. However, to the extent allowed by law, this Mortgage shall be a financing statement sufficient to perfect and maintain any security interest created hereby in the Property and its proceeds.

7. That Mortgagee will pay or caused to be paid as they become due the principal and interest on all notes, obligations, contracts or agreements, secured by any mortgage, lien, or security interest having priority over this Mortgage as to the Property described herein. If the Mortgagor fails to make any of the payments as provided in this section, Mortgagee may pay the same and add any amounts so paid to the principal debt, and all sums so paid shall bear interest at the same rate as the principal debt secured hereby and shall be secured by this Mortgage.

8. Mortgagor for itself, its successors, and assigns represents, warrants and agrees that (a) neither Mortgagor nor any other person has used or installed any Hazardous Material (as hereinafter defined) on the Property or received any notice from any governmental agency, entity or other person with regard to Hazardous Materials on, from or affecting the Property; (b) neither Mortgagor or any other person has violated any applicable Environmental Laws (as hereinafter defined) relating to or affecting the Property; (c) the Property is presently in compliance with all Environmental Laws, there are no circumstances presently existing upon or under the Property, or relating to the Property which may violate any applicable Environmental Laws, and there is not now pending, or threatened, any action, suit, investigation or proceeding against Mortgagor relating to the Property (or against any other party relating to the Property) seeking to enforce any right or remedy under any of the Environmental Laws; (d) the Property shall be kept free of Hazardous Materials, and shall not be used to generate, manufacture, transport, treat, store, handle, dispose, or process Hazardous Materials; (e) Mortgagor shall not cause nor permit the installation of Hazardous Materials in the Property nor a release of Hazardous Material onto or from the Property or suffer the presence of Hazardous Materials on the Property; (f) Mortgagor shall at all times comply with and ensure compliance by all other parties with all applicable Environmental Laws relating to or affecting the Property and shall keep the Property free and clear of any liens imposed pursuant to any applicable Environmental Laws; (g) the Mortgagor has obtained and will at all times continue to obtain and/or maintain all licenses, permits and/or other governmental or regulatory actions necessary to comply with Environmental Laws (the "Permits") and the Mortgagor is in full compliance with the terms and provisions of the Permits and will continue to comply with the terms and provisions of the Permits; (h) Mortgagor shall immediately give the Mortgagee oral and written notice in the event that Mortgagor receives any notice from any governmental agency, entity, or any other party with regard to Hazardous Materials on, from or affecting the Property and shall conduct and complete all investigations, sampling, and testing, and all remedial, removal, and other actions necessary or clean up and remove all Hazardous Materials on, from or affecting the Property in accordance with all applicable Environmental Laws. The Mortgagee hereby agrees to indemnify the Mortgagee and hold the Mortgagee harmless from and against any and all losses, liabilities, damages, inquiries (including, without limitation, attorneys' fees) and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against Mortgagee for, with respect to, or as a direct or indirect result of (a) the presence, on, or under, or the escape, spillage, emission or release from the Property of any Hazardous Material regardless of whether or not caused by or within the control of Mortgagor, (b) the violation of any Environmental Laws relating to or affecting the Property, whether or not caused by or within the control of Mortgagor, (c) the failure by Mortgagor to comply fully with the terms and provisions of this paragraph, or (d) any warranty or representation made by Mortgagor in this paragraph being false or untrue in any material respect. For purposes of this Mortgage, "Hazardous Material" means and includes petroleum products, any flammable explosives, radioactive materials, asbestos or any material containing asbestos, and/or any hazardous, toxic or dangerous waste, substance or material defined as such in (or for the purposes of) the Environmental Laws. For the purpose of this Mortgage, "Environmental Laws" means the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, any "Super Fund" or "Super Lien" law, or any other federal, state, or local law, regulation, or decree regulating, relating to, or imposing liability or standards of conduct concerning any petroleum products, any flammable explosives, radioactive materials, asbestos or any material containing asbestos, and/or any hazardous, toxic or dangerous waste, substance or material, as may now or at any time hereafter be in effect. The obligations and liabilities of Mortgagor under this paragraph shall survive the foreclosure of the Mortgage, the delivery of a deed in lieu of foreclosure, the cancellation or release of record of this Mortgage or the payment and cancellation of the Note; or if otherwise expressly permitted in writing by the Mortgagee, the sale or alienation of any part of the Property.

9. That in the event that Mortgagor or Borrower shall default in its obligations under this Mortgage, the Note, or other Loan Documents, and Mortgagee employs an attorney to assist in the collection of the Debt or to enforce compliance of Mortgagor with any of the provisions of this Mortgage, the Note, or other Loan Documents, or in the event Mortgagee shall become party to any suit or legal proceeding (including any proceeding conducted before any United States Bankruptcy Court) concerning the Property, concerning the lien of this Mortgage, concerning collection of the Debt, or concerning compliance by Mortgagor or Borrower with any of the provisions of this Mortgage, the Note, or other Loan Documents, Mortgagee shall pay Mortgagee's reasonable attorneys' fees and all of the costs that may be incurred, and such fees and costs shall be secured by this Mortgage and its payment enforced as if it were a part of the Debt. Mortgagor shall be liable for such attorneys' fees and costs whether or not any suit or proceeding is commenced.

10. That to the extent permitted by law, Mortgagee may grant releases at any time and from time to time of all or any portion of the Property (whether or not such releases are required by agreement among the parties) agreeable to Mortgagee without notice to or the consent, approval or agreement of other parties and interests, including junior lienors and purchasers subject to the lien of this Mortgage, and such releases shall not impair in any manner the validity of or priority of this Mortgage on that portion of the Property remaining subject to this Mortgage, nor release Mortgagor from personal liability for the Debt. Notwithstanding the existence of any other security interests in the Property held by Mortgagee or by any other party, Mortgagee shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies available to Mortgagee, and Mortgagee shall further have the

right to determine the order in which any or all portions of the Debt are satisfied from the proceeds realized upon the exercise of any remedy it has. Mortgagor, or any party who consents to this, or any party who has actual or constructive notice hereof, hereby waives any and all rights to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

11. That Mortgagor shall be in default under this Mortgage upon the occurrence of any of the following:

(a) Default in the payment or performance of any of the obligations, or of any covenant or warranty, in this Mortgage, in the Note, or other document secured in connection herewith, or in any other note of Mortgagor or Borrower to Mortgagee or any contract between Mortgagor or Borrower and Mortgagee, or in any contract between any third party and Mortgagee made for the benefit of Mortgagor, or

(b) Any warranty, representation or statement made or furnished to Mortgagee by or on behalf of Mortgagor or Borrower in connection with this transaction proving to have been false in any material respect when made or furnished; or

(c) Loss, theft, substantial damage, destruction to or of the Property, or the assertion or making of any levy, seizure, mechanic's or materialman's lien or attachment thereof or thereon; or

(d) Death, dissolution, termination of existence, insolvency, business failure, appointment of a Receiver for any part of the property or assignment for the benefit of creditors by, filing of a bankruptcy petition by or against, or the inability to pay debts in the ordinary course of business of the Mortgagor, Borrower or any co-maker, endorser, guarantor or surety for Mortgagor or Borrower; or

(e) Failure of a corporate Mortgagor, Borrower or co-maker, endorser, guarantor or surety for Mortgagor to maintain its corporate existence in good standing; or

(f) Upon the entry of any monetary judgment of the assessment or filing of any tax lien against Mortgagor or Borrower, or upon the issuance of any writ of garnishment or attachment against any property, debts due or rights of Mortgagor or Borrower; or

(g) The sale (including sale by land contract upon delivery of possession), transfer or encumbrance of all or any part of the Property or any interest therein, or any change in the ownership or control of any corporate or partnership Mortgagor, or Borrower, without Mortgagee's prior written consent; or

(h) If Mortgagee should otherwise deem itself, its security interest, the Property or the indebtedness evidenced by the Note unsafe or insecure, or should Mortgagee otherwise believe that the prospect of payment or other performance is impaired.

12. That the Mortgagor shall hold and enjoy the premises above conveyed until there is a default under this Mortgage or in the Note secured hereby. If there is a default in any of the terms, conditions or covenants of this Mortgage or of any of the Notes secured hereby, then at the option of the Mortgagee, and without prior notice to the Mortgagor, all sums then owing by the Mortgagor, or any Borrower or any other obligor on the Notes to the Mortgagee shall become immediately due and payable, the Mortgagee may in addition pursue all other rights and remedies available against the Mortgagor, Borrower or any other obligor under the Notes under applicable provisions of South Carolina Law and of any other law governing the Notes. This Mortgage shall remain as security for full payment of all indebtedness evidenced by the Notes and for performance of any obligation evidenced by the Notes or any document executed in connection herewith, notwithstanding the sale or release of any or all of the Property, the assumption by another party of Mortgagor's obligations under the Note or this Mortgage, the forbearance or extension of time or payment of the indebtedness evidenced by the Note or any one of same or the release of any party who has assumed or incurred any obligation for the repayment of any indebtedness evidenced by the Note and secured by this Mortgage. None of the foregoing shall in any way affect the full force and effect of the lien of this Mortgage or impair the Mortgagee's right to any other remedies against the Mortgagor, Borrower or any other obligors under the Note. Any forbearance by the Mortgagee in exercising any right or remedy hereunder or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Mortgagee shall not be a waiver of Mortgagee's right to accelerate maturity of the indebtedness evidenced by the Notes secured hereby. Time is of the essence the payment or performance of any of the obligations, or of any covenant or warranty contained in this Mortgage, or in the Note or any other document related thereto.

13. That upon default hereunder, along with other remedies set out herein and in the above referenced Note, the Mortgagee may foreclose upon the mortgaged premises and ask for a deficiency judgment pursuant to §29-3-660 of the South Carolina Code of Laws (1976). Mortgagor hereby expressly waives and relinquishes any appraisal rights which Mortgagor may have under §29-3-660 et seq., South Carolina Code of Laws (1976), as amended, and understands and agrees that a deficiency judgment, if pursued by Mortgagee, shall be determined by the highest priced bid at the judicial sale of the Property. In the event that Mortgagee voluntarily or otherwise shall become parties to any suit or legal proceeding involving the Property, it shall be held harmless and shall be reimbursed by Mortgagor for any amounts paid, including all costs, charges and attorney's fees incurred in any such suit or proceeding, and the same shall be secured by this Mortgage and payable upon demand.

14. That the covenants herein contained shall bind, and the benefits and advantages shall inure to, the respective heirs, executors, administrators, successors, and assigns of the parties hereto. Whenever used, the singular number shall be applicable to all genders and the term "Mortgagee" shall include any payee of the indebtedness hereby secured or any transferee thereof whether by

operation of law or otherwise. The liability of the Mortgagor hereunder shall, if more than one, be joint and several. The designations "corporate", "corporation", and "partnership" include limited liability companies and limited liability partnerships.

15. WAIVER OF TRIAL BY JURY. UNLESS EXPRESSLY PROHIBITED BY APPLICABLE LAW, THE UNDERSIGNED HEREBY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY MATTERS OR CLAIMS ARISING OUT OF THIS MORTGAGE OR ANY LOAN DOCUMENT EXECUTED IN CONNECTION HERewith OR OUT OF THE CONDUCT OF THE RELATIONSHIP BETWEEN THE UNDERSIGNED AND MORTGAGEE. THIS PROVISION IS A MATERIAL INDUCEMENT FOR MORTGAGEE TO MAKE THE LOAN SECURED BY THIS MORTGAGE. FURTHER, THE UNDERSIGNED HEREBY CERTIFY THAT NO REPRESENTATIVE OR AGENT OF MORTGAGEE, NOR MORTGAGEE'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT MORTGAGEE WOULD NOT SEEK TO ENFORCE THIS WAIVER OR RIGHT TO JURY TRIAL PROVISION IN THE EVENT OF LITIGATION. NO REPRESENTATIVE OR AGENT OF MORTGAGEE, NOR MORTGAGEE'S COUNSEL, HAS THE AUTHORITY TO WAIVE, CONDITION OR MODIFY THIS PROVISION.

Waiver of Appraisal Rights. The Laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. TO THE FULLEST EXTENT PERMITTED BY LAW AND AS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN, MORTGAGOR HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.

IN WITNESS WHEREOF, each Mortgagor has executed this Mortgage the day and year first above written.

Signed, sealed and delivered in the presence of:

Signed, sealed and delivered in the presence of:

MORTGAGOR:

YAMINTO, LLC

By: [Signature] (SEAL)

Name: James Earl Workman Jr.

Title: _____

[Signature] (SEAL)

[Signature] (SEAL)

2011 DEC 31 P 2:36

RECORDED BY
COUNTY CLERK
OFFICE OF RECORDS

STATE OF SC)
COUNTY OF Pickens)

ACKNOWLEDGMENT

I, Christopher G. Olson a notary public for SC do hereby certify that James Neal Workman, Jr. the Member of Yewno, LLC, a South Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal (where an official seal is required by law) official seal this 31 day of December, 2009.


Signature of Notary Public
My Commission Expires 12/19/2012

Diane Clarke (SEAL)

RECORDED
INDEXED
2009 DEC 31 P 12:36
CLERK OF COURTS
PICKENS COUNTY, S.C.
COURT HOUSE BUILDING

EXHIBIT A

Legal Description

All that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Oconee, Seneca Township, near Ulica Mill, containing 6.53 acres, more or less, as shown on a plat of survey prepared by Michael L. Henderson, RLS 46945, dated July 21, 1987 and recorded November 17, 1987 in Plat Book P-55 at Page 179, in the Office of the Clerk of Court for Oconee County, South Carolina, said plat being incorporated herein by reference pursuant to the provisions of Section 30-5-250, South Carolina Code of Laws for a notes and bounds description.

Deviation: This being the same property conveyed unto Yasinto, LLC by deed of J. Neal Workman dated June 30, 2003 and recorded July 8, 2003 in Deed Book 1287, at Page 270, records of Oconee County, South Carolina.

TMS# 225-00-01-079

RECORDED
OFFICE OF CLERK OF COURT
OCONEE COUNTY, S.C.
FILED IN OFFICE OF
JAN DEC 31 PM 12:36



Doc ID: 0002250008 Type: MTD
#2834 Pg 144-149

2010 JAN 15 P 3:02

STATE OF SOUTH CAROLINA)
)
)
COUNTY OF OCONEE)

FIRST MODIFICATION AGREEMENT
RE: MORTGAGE OF REAL ESTATE
RECORDED IN BOOK 2693 AT PAGE 165,
ASSIGNMENT OF LEASES AND RENTS
RECORDED IN BOOK 2693 AT PAGE 172,
AND SECURITY AGREEMENT DATED
JANUARY 6, 2009

*Loan
2/2/10
008041*

THIS FIRST MODIFICATION AGREEMENT (the "Agreement") is entered into to be effective as of January 15, 2010, by and among **POINTE WEST, INC.**, a South Carolina corporation ("Pointe West") and **BRANCH BANKING AND TRUST COMPANY**, a North Carolina banking corporation (the "Lender").

PRELIMINARY STATEMENT:

A. Lender previously extended a term loan to Pointe West in the original principal amount of Six Million One Hundred Ninety Thousand Four Hundred Seventy-Five and 00/100 Dollars (\$6,190,475.00) (the "Pointe West Loan"), as evidenced by that certain Promissory Note dated January 6, 2009 (as amended, modified, or restated, the "Pointe West Note").

B. Lender previously extended the following credit facilities to High Points, LLC, a South Carolina limited liability company ("High Points"): (i) a term loan in the original principal amount of Three Million One Hundred Forty-Five Thousand and 00/100 Dollars (\$3,145,000.00) (the "Development High Points Loan"), as evidenced by that certain Promissory Note dated January 6, 2009 (as amended, modified, or restated, the "Development High Points Note"); (ii) a construction loan in the original principal amount of Six Million Five Hundred Thousand and 00/100 Dollars (\$6,500,000.00) (the "Bridge to Clemson High Points Loan"), as evidenced by that certain Promissory Note dated January 6, 2009 (as amended, modified, or restated, the "Bridge to Clemson High Points Note"); (iii) a term loan in the original principal amount of Seven Million Six Hundred Thousand and 00/100 Dollars (\$7,600,000.00) (the "Phase One Condo High Points Loan"), as evidenced by that certain Promissory Note dated January 6, 2009 (as amended, modified, or restated, the "Phase One Condo High Points Note"); and (iv) a term loan in the original principal amount of Two Million and 00/100 Dollars (\$2,000,000.00) (the "Trehel High Points Loan" and together with the Development High Points Loan, the Bridge to Clemson High Points Loan, and the Phase One Condo High Points Loan, the "2009 High Points Loans"), as evidenced by that certain Promissory Note dated December 31, 2009 (as amended, modified, or restated, the "Trehel High Points Note" and together with the Development High Points Note, the Bridge to Clemson High Points Note, and the Phase One Condo High Points Note, the "2009 High Points Notes").

C. Lender previously extended a term loan to Harts Cove Development, LLC ("Harts Cove") in the original principal amount of One Million Four Hundred Thousand and 00/100 Dollars (\$1,400,000.00) (the "Harts Cove Loan"), as evidenced by that certain Promissory Note dated January 6, 2009 (as amended, modified, or restated, the "Harts Cove Note" and together with the Pointe West Note and the 2009 High Points Notes, the "2009 Notes").

D. Each of the Points West Loan, the 2009 High Pointe Loans, and the Harts Cove Loan (collectively referred to herein as the "2009 Loans") was originally governed by that certain Loan Agreement dated January 6, 2009, as amended by that certain Amendment No. 1 to Loan Agreement dated December 31, 2009 (the "Original Loan Agreement").

E. The obligations of Points West, High Pointe, and Harts Cove (collectively referred to herein as "Borrowers") under the 2009 Loans and the 2009 Notes were secured by, among other things, the following documents: (i) that certain Mortgage of Real Estate dated January 6, 2009, by Points West in favor of Lender and recorded January 7, 2009, in the Office of the Register of Deeds for Oconee County, South Carolina in Book 2693 at page 165 (the "Points West Mortgage"); (ii) that certain Mortgage of Real Estate dated January 6, 2009, by High Pointe in favor of Lender and recorded January 7, 2009, in the Office of the Register of Deeds for Oconee County, South Carolina in Book 2693 at page 147 (the "High Pointe Mortgage"); (iii) that certain Mortgage of Real Estate dated January 6, 2009, by Harts Cove in favor of Lender and recorded January 7, 2009, in the Office of the Register of Deeds for Oconee County, South Carolina in Book 2693 at page 129 (the "Harts Cove Mortgage"); (iv) that certain Mortgage of Real Estate dated January 6, 2009, by Jacobb Utilities, LLC, a South Carolina limited liability company ("Jacobb") in favor of Lender and recorded January 7, 2009, in the Office of the Register of Deeds for Oconee County, South Carolina in Book 2693 at page 111 (the "Jacobb Mortgage" and together with the Points West Mortgage, the High Pointe Mortgage, and the Harts Cove Mortgage, the "2009 Mortgages"); (v) that certain Assignment of Leases and Rents dated January 6, 2009, by Points West in favor of Lender and recorded January 7, 2009, in the Office of the Register of Deeds for Oconee County, South Carolina in Book 2693 at page 172 (the "Points West Assignment of Leases"); (vi) that certain Assignment of Leases and Rents dated January 6, 2009, by High Pointe in favor of Lender and recorded January 7, 2009, in the Office of the Register of Deeds for Oconee County, South Carolina in Book 2693 at page 154 (the "High Pointe Assignment of Leases"); (vii) that certain Assignment of Leases and Rents dated January 6, 2009, by Harts Cove in favor of Lender and recorded January 7, 2009, in the Office of the Register of Deeds for Oconee County, South Carolina in Book 2693 at page 136 (the "Harts Cove Assignment of Leases"); (viii) that certain Assignment of Leases and Rents dated January 6, 2009, by Jacobb in favor of Lender and recorded January 7, 2009, in the Office of the Register of Deeds for Oconee County, South Carolina in Book 2693 at page 118 (the "Jacobb Assignment of Leases" and together with the Points West Assignment of Leases, the High Pointe Assignment of Leases, and the Harts Cove Assignment of Leases, the "2009 Assignments of Leases"); (ix) that certain Security Agreement dated January 6, 2009, by and between Points West and Lender (the "Points West Security Agreement"); (x) that certain Security Agreement dated January 6, 2009, by and between High Pointe and Lender (the "High Pointe Security Agreement"); (xi) that certain Security Agreement dated January 6, 2009, by and between Harts Cove and Lender (the "Harts Cove Security Agreement"); and (xii) that certain Security Agreement dated January 6, 2009, by and between Jacobb and Lender (the "Jacobb Security Agreement" and together with the Points West Security Agreement, the High Pointe Security Agreement, and the Harts Cove Security Agreement, the "2009 Security Agreements"). The 2009 Mortgages, 2009 Assignments of Leases, and 2009 Security Agreements are collectively referred to herein as the "2009 Security Instruments".

F. As of the date hereof, Lender has extended a term loan to High Pointe in the original principal amount of Three Million Three Hundred Twenty Thousand and 00/100 Dollars

(\$3,320,000.00) (the "Bridge to Clemson High Pointe Loan III-A"), as evidenced by that certain Promissory Note dated as of the date hereof (as amended, modified, or restated, the "Bridge to Clemson High Pointe III-A Note").

G. As of the date hereof, Lender and Borrowers have entered into that certain Amended and Restated Loan Agreement dated as of the date hereof (as amended, modified, or restated, the "Loan Agreement"), which Loan Agreement by its terms amends and restates the Original Loan Agreement in its entirety and therefore such Loan Agreement governs each of the 2009 Loans and the Bridge to Clemson High Pointe Loan III-A (collectively referred to herein as the "Loans").

H. Except as otherwise provided, all terms herein shall have the meanings ascribed thereto in the Loan Agreement and all other documents related to the Loans (as amended or modified, the "Loan Documents").

I. Lender and Pointe West are executing this Agreement to (i) modify the 2009 Security Instruments to which Pointe West is a party to evidence that all of the loan obligations of High Pointe to Lender under the 2009 Trehel High Pointe Loan, together with all loan obligations of High Pointe under the Bridge to Clemson High Pointe III-A Note, are deemed future advances under the 2009 Mortgages and are secured by such 2009 Security Instruments; (ii) to include within the definition of "Note" or "Notes" in the 2009 Security Instruments and all references therein the Trehel High Pointe Note and the Bridge to Clemson Loan III-A Note; and (iii) to indicate that all references to "Loan Agreement" in the 2009 Security Instruments shall mean the Amended and Restated Loan Agreement dated as of the date hereof, as may be amended, modified, or restated from time to time.

NOW, THEREFORE, in consideration of the mutual promises contained hereinbelow, the sum of Five and No/100 Dollars (\$5.00) and other good and valuable consideration, the receipt, sufficiency and adequacy of which the parties do hereby acknowledge, the parties do hereby agree as follows:

1. All of the 2009 Security Instruments in which Pointe West is a party are amended as necessary to provide that (i) the obligations under the Trehel High Pointe Loan, the Trehel High Pointe Note, the Bridge to Clemson Loan III-A, and the Bridge to Clemson Loan III-A Note are secured thereby, and in particular that the Trehel High Pointe Loan and the Bridge to Clemson Loan III-A are deemed future advances under the 2009 Mortgages; (ii) the definition of "Note" or "Notes" in the 2009 Security Instruments and all references thereto shall include the Trehel High Pointe Note and the Bridge to Clemson Loan III-A Note; and (iii) all references to "Loan Agreement" in the 2009 Security Instruments shall mean the Amended and Restated Loan Agreement dated as of the date hereof, as may be amended, modified, or restated from time to time.

2. Except as otherwise modified hereby, the terms and provisions of the Loan Documents shall remain in full force and effect.

3. Pointe West agrees to release Lender forever from, and to indemnify Lender and hold Lender harmless for, any and all claims or causes of action that may arise in connection

with the consummation of the transactions contemplated by this Agreement or otherwise related to the Loans or the Loan Documents, or Lender's conduct.

4. The transactions contemplated by this Agreement shall be a modification to the Loan Documents and shall not be construed as a novation.

[SIGNATURE PAGES ATTACHED]

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date first written above.

WITNESSES:

Max B. [unclear]
Diane [unclear]

BORROWER:

POINTE WEST, INC.

By: *William W. Huss, Jr.*
Name: William W. Huss, Jr.
Title: President

LENDER:

WITNESSES:

Max B. [unclear]
Diane [unclear]

BRANCH BANKING AND TRUST
COMPANY

By: *Richard C. Starland, III*
Name: Richard C. Starland, III
Title: Senior Vice President

STATE OF South Carolina)
COUNTY OF Pickens)

ACKNOWLEDGMENT

I, Mary Beth Williams, a notary public for South Carolina, do hereby certify that William W. Huss, Jr., the President of Pointe West, Inc., a South Carolina corporation, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal (where an official seal is required by law) official seal this 15 day of January, 2010.

Mary Beth Williams (SEAL)
Signature of Notary Public
My Commission Expires: 2-29-2012

STATE OF SOUTH CAROLINA)
COUNTY OF Pickens)

ACKNOWLEDGMENT

I, Mary Beth Williams, a notary public for South Carolina, do hereby certify that Richard C. Standrod, III, a Senior Vice President of Branch Banking and Trust Company, a North Carolina banking corporation, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal (where an official seal is required by law) official seal this 15 day of January, 2010.

Mary Beth Williams (SEAL)
Signature of Notary Public
My Commission Expires: 2-29-2012

FILED FOR RECORD
PICKENS COUNTY, S.C.
REGISTRAR OF DEEDS
2010 JAN 15 P 3:02

2010 JAN 15 P 3:03

Doc ID: 0080450008 Type: MFG
SK 2834 pg 162-169

Handwritten: 1400

Handwritten: 008045

(Space Above This Line For Recording Only)
COMMERCIAL CONSTRUCTION REAL ESTATE MORTGAGE

This COMMERCIAL CONSTRUCTION REAL ESTATE MORTGAGE ("Security Instrument") is made on January 15, 2010 between the mortgagee(s) HIGH POINTE LLC, a South Carolina Limited Liability Company, whose address is 602-S COLLEGE AVENUE, Clemson, South Carolina 29631 ("Mortgagee"), and GREER STATE BANK whose address is PO BOX 1029, GREER, South Carolina 29615 ("Lender"), which is organized and existing under the laws of the State of South Carolina. Mortgagee in consideration of loans extended by Lender up to a maximum principal amount of One Million Seven Hundred Fifty Thousand and 00/100 Dollars (\$1,750,000.00) ("Maximum Principal Indebtedness"), and for other valuable consideration, the receipt of which is acknowledged, hereby mortgages, grants and conveys to Lender, its successors and assigns, forever, the following described property located in the COUNTY of OCONEE, State of South Carolina:

Address: BUILDING I-KHAKI CAMPBELL WAY (HIGH POINTE DEVELOPMENT), Seneca, South Carolina 29678
Legal Description: SEE ATTACHED EXHIBIT "A"

Together with all easements, appurtenances, streets and alleys, improvements, buildings, fixtures, tenements, hereditaments, equipment, rents, income, profits and royalties, personal goods of whatever description and all other rights and privileges including all minerals, oil, gas, water (whether groundwater, subterranean or otherwise), water rights (whether riparian, appropriate or otherwise, and whether or not appurtenant to the above-described real property), wells, well permits, ditches, ditch rights, reservoirs, reservoir rights, reservoir sites, storage rights, dams and water creek that may now, or at any time in the future, be located on and/or used in connection with the above-described real property, payment awards, amounts received from eminent domain, amounts received from any and all insurance payments, and timber which may now or later be located, situated, or affixed on and used in connection therewith (hereinafter called the "Property").

RELATED DOCUMENTS. The words "Related Documents" mean all promissory notes, security agreements, prior mortgages, prior deeds of trust, business loan agreements, construction loan agreements, resolutions, guarantees, environmental agreements, subordination agreements, assignments of leases and rents and any other documents or agreements executed in connection with this Security Instrument whether now or hereafter existing. The Related Documents are hereby made a part of this Security Instrument by reference thereto, with the same force and effect as if fully set forth herein.

INDEBTEDNESS. This Security Instrument secures the principal amount shown above as may be evidenced by a promissory note or notes of debt, prior or subsequent date hereto, including future advances and every other indebtedness of any and every kind now or hereafter owing from Mortgagee to Lender, howsoever created or arising, whether primary, secondary or contingent, together with any interest or charges provided in or arising out

© 2004 CoreLogic Software, Inc. TEL: 877-444-4433
For more information, please contact 1-800-444-4433
www.corelogic.com

of such indebtedness, as well as the agreements and covenants of this Security Instrument and all related Documents (hereinafter all referred to as the "Indebtedness").

MATURITY DATE. The Indebtedness, if not paid earlier, shall be due and payable on January 15, 2030.

FUTURE ADVANCES. To the extent permitted by law, this Security Instrument will secure future advances as if such advances were made on the date of this Security Instrument regardless of the fact that from time to time there may be no balance due under the note and regardless of whether Lender is obligated to make such future advances.

CROSS COLLATERALIZATION. It is the expressed intent of Mortgagor to cross collateralize all of its Indebtedness and obligations to Lender, in whatever amount and whenever incurred.

CONSTRUCTION LOAN AGREEMENT. This Security Instrument is made in conjunction with a Construction Loan Agreement dated the same date as this Security Instrument and is subject to all of the provisions of the Construction Loan Agreement as if those provisions were fully set forth in this security instrument and made a part of it.

WARRANTIES. Mortgagor, for itself, its heirs, personal representatives, successors, and assigns, represents, warrants, covenants and agrees with Lender, its successors and assigns, as follows:

Performance of Obligations. Mortgagor promises to perform all terms, conditions, and covenants of this Security Instrument and Related Documents in accordance with the terms contained therein.

Defense and Title to Property. At the time of execution and delivery of this instrument, Mortgagor is lawfully seized of the estate hereby conveyed and has the exclusive right to mortgage, grant, convey and assign the Property. Mortgagor covenants that the Property is unencumbered and free of all liens, except for encumbrances of record acceptable to Lender. Further, Mortgagor covenants that Mortgagor will warrant and defend generally the title to the Property against any and all claims and demands whatsoever, subject to the easements, restrictions, or other encumbrances of record acceptable to Lender, as may be listed in the schedule of exceptions to coverage in any abstract of title or title insurance policy insuring Lender's interest in the Property.

Condition of Property. Mortgagor promises at all times to preserve and to maintain the Property and every part thereof in good repair, working order, and condition and will from time to time, make all needed and proper repairs so that the value of the Property shall not in any way be impaired.

Removal of any Part of the Property. Mortgagor promises not to remove any part of the Property from its present location, except for replacement, maintenance and relocation in the ordinary course of business.

Alterations to the Property. Mortgagor promises to abstain from the commission of any waste on the Property. Further, Mortgagor shall make no material alterations, additions or improvements of any type whatever to the Property, regardless of whether such alterations, additions or improvements would increase the value of the Property, as a general course to do so except for tenant improvements and completion of items pursuant to approved plans and specifications, without Lender's prior written consent, which consent may be withheld by Lender in its sole discretion. Mortgagor will comply with all laws and regulations of all public authorities having jurisdiction over the premises relating to the use, occupancy and maintenance thereof and shall upon request promptly submit to Lender evidence of such compliance.

Due on Sale - Lender's Consent. Mortgagor shall not sell, further encumber or otherwise dispose of, except as herein provided, any or all of its interest in any part of or all of the Property without first obtaining the written consent of Lender. If any circumstance, lien, transfer or sale or agreement for these is created, Lender may declare immediate due and payable, the entire balance of the Indebtedness.

Insurance. Mortgagor promises to keep the Property insured against such risks and in such form as may within the sole discretion of Lender be acceptable, causing Lender to be named as loss payee or if requested



by Lender, as mortgage. The insurance company shall be chosen by Mortgagee subject to Lender's approval, which shall not be unreasonably withheld. All insurance policies must provide that Lender will get a minimum of 10 days notice prior to cancellation. At Lender's discretion, Mortgagee may be required to produce receipts of paid premiums and renewal notices. If Mortgagee fails to obtain the required coverage, Lender may do so at Mortgagee's expense. Mortgagee hereby directs each and every insurer of the Property to make payment of loss to Lender with the proceeds to be applied, only at Lender's option, to the repair and replacement of the damage or loss or to be applied to the indebtedness with the surplus, if any, to be paid by Lender to Mortgagee.

Payment of Taxes and Other Applicable Charges. Mortgagee promises to pay and to discharge liens, encumbrances, taxes, assessments, lease payments and any other charges relating to the Property when levied or assessed against Mortgagee or the Property.

Environmental Liens and Hazardous or Toxic Materials. Mortgagee and every grant have been, are presently and shall continue to be in strict compliance with any applicable local, state and federal environmental laws and regulations. Further, neither Mortgagee nor any tenant shall manufacture, store, handle, discharge or dispose of hazardous or toxic materials as may be defined by any state or federal law or the Property, except to the extent the character of such materials has been previously disclosed in writing to Lender. Mortgagee will immediately notify Lender in writing of any assertion or claim made by any party as to the possible violation of applicable state and federal environmental laws including the location of any hazardous or toxic materials on or about the Property. Mortgagee indemnifies and holds Lender harmless from any liability or expense of whatsoever nature incurred directly or indirectly as a result of Mortgagee's violation of applicable local, state and federal environmental laws and regulations or Mortgagee's involvement with hazardous or toxic materials.

Financial Information. Mortgagee agrees to supply Lender such financial and other information concerning its affairs and the status of any of its assets as Lender, from time to time, may reasonably request. Mortgagee further agrees to permit Lender to audit accounts as well as to inspect, copy and to examine the books, records and files of Mortgagee.

Lender's Right to Enter. Lender or Lender's agents shall have the right and access to inspect the Property at all reasonable times in order to shield to Lender's interests and ensure compliance with the terms of this Security Instrument. If the Property, or any part thereof, shall require inspection, repair or maintenance which Mortgagee has failed to provide, Lender, after reasonable notice, may enter upon the Property to effect such obligation; and the cost thereof shall be added to the indebtedness and paid on Lender's demand by Mortgagee.

ASSIGNMENT OF LIENS AND INTERESTS. As additional security for the payment of the indebtedness and the performance of the covenants contained herein, Mortgagee hereby assigns and transfers over to Lender all rents, income and profits ("Rents") under any present or future leases, subleases or licenses of the Property, including any automatic, extension, amendments or renewals thereof, from the use of the Property. So long as Mortgagee is not in default, Mortgagee may receive, collect and enjoy all Rents accruing from the Property, but not more than one month in advance of the due date. Lender may also require Mortgagee, tenant and any other user of the Property to make payments of Rents directly to Lender. However, by receiving any such payments, Lender is not, and shall not be considered, as agent for any party or entity. Any amounts collected may, at Lender's sole discretion, be applied to general Lender's loans on the Property, including but not limited to the payment of taxes and insurance premiums due to the indebtedness. At Lender's sole discretion, all leases, subleases and licenses must first be approved by Lender.

CONDEMNATION. Mortgagee shall give notice of any action taken or threatened to be taken by private or public bodies to appropriate the Property or any part thereof, through condemnation, eminent domain or any other action. Further, Lender shall be entitled to participate or intervene in any of the above described



proceedings in any manner it shall, at its sole discretion determine. Lender is hereby given full power, right and authority to receive and receipt for any and all moneys awarded as a result of the full or partial taking or appropriation and in its sole discretion, to apply said moneys to the Indebtedness, whether or not then due or otherwise in accordance with applicable law. Unless Lender otherwise agrees in writing, any application of proceeds to the Indebtedness shall not extend or postpone the due date of the payments due under the Indebtedness or change the amount of such payments.

MORTGAGOR'S ASSURANCES. At any time, upon a request of Lender, Mortgagor will execute and deliver to Lender, and if appropriate, cause to be recorded, such further mortgages, assignments, assignments of leases and rents, security agreements, pledges, financing statements, or such other documents as Lender may require, in Lender's sole discretion, to effectuate, complete and to perfect as well as to continue to preserve the Indebtedness, or the lien or security interest created by this Security Instrument.

ATTORNEY-IN-FACT. Mortgagor appoints Lender as attorney-in-fact on behalf of Mortgagor. If Mortgagor fails to fulfill any of Mortgagor's obligations under this Security Instrument or any Related Documents, including those obligations mentioned in the preceding paragraph, Lender as attorney-in-fact may fulfill the obligations without notice to Mortgagor. This power of attorney shall not be affected by the disability of the Mortgagor.

EVENTS OF DEFAULT. The following events shall constitute default under this Security Instrument (each an "Event of Default"):

- (a) Failure to make required payments when due under Indebtedness;
- (b) Failure to perform or meet any of the covenants of this Security Instrument or a default under any of the Related Documents;
- (c) The making of any oral or written statement or assertion to Lender that is false or misleading in any material respect by Mortgagor or any person obligated on the Indebtedness;
- (d) The death, insolvency, incompetency, bankruptcy or receivership proceeding of Mortgagor or of any person or entity obligated on the Indebtedness;
- (e) Any assignment by Mortgagor or by benefit of Mortgagor's creditors;
- (f) A material adverse change occurs in the financial condition, ownership or management of Mortgagor or any person obligated on the Indebtedness; or
- (g) Lender deems itself necessary for any reason whatsoever.

REMEDIES ON DEFAULT. Upon the occurrence of an Event of Default, Lender may, without demand or notice, pay any or all taxes, assessments, premiums, and liens required to be paid by Mortgagor, effect any insurance provided for hereon, cause to be reported, issue the abstracts of title or title insurance policy and tax histories of the Property to be recorded to date, or procure new abstracts of title or title insurance and tax histories in case none were furnished to it, and preserve all reports covering the Property, including surveys. The amounts paid for any such purposes will be added to the Indebtedness and will bear interest at the rate of interest otherwise accruing on the Indebtedness until paid. In the event of foreclosure, the abstracts of title or title insurance shall secure the property of Lender. All abstracts of title, title insurance, tax histories, surveys, and other documents pertaining to the Indebtedness will remain in Lender's possession until the Indebtedness is paid in full.

IN THE EVENT OF THE SALE OF THIS PROPERTY UNDER THE PROCEDURE FOR FORECLOSURE OF A SECURITY INSTRUMENT OR A COURT'S ORDER, AS PROVIDED BY APPLICABLE LAW, OR IN THE EVENT LENDER EXERCISES SUCH OTHER RIGHTS OR THE ASSIGNMENT OF LEASES AND RENTS, THE MORTGAGOR HEREBY WAIVES ANY RIGHT TO ANY NOTICE OTHER THAN THAT PROVIDED FOR SPECIFICALLY BY STATUTE, COURT OR JUDICIAL HEARING PRIOR TO SUCH SALE OR OTHER EXERCISE OF RIGHTS.

Upon the occurrence of an Event of Default, Lender may, without notice unless required by law, and at its option, declare the entire Indebtedness due and payable as if it were then, regardless of the due or dates of maturity thereof and, if permitted by applicable law, cause the Property to be sold at public auction, and to execute and deliver to the purchaser or purchasers of such sale any deeds of conveyance good and sufficient at

© 2008, The Commercial Real Estate Lender's Association, Inc. All rights reserved. Form 100-1000-08

law, pursuant to the statute in such case made and provided, and out of the proceeds of the sale to retain the sums then due hereunder and all costs and charges of the sale, including attorneys' fees, rendering any surplus to the party or parties entitled to it. Any post-sale or a sale made pursuant to a judgment or a decree for the foreclosure hereof may, at the option of Lender, be made in course. The commencement of proceedings to foreclose this Security Instrument in any manner authorized by law shall be deemed as exercise of the above option.

Upon the occurrence of an Event of Default, Lender shall immediately be entitled to make application for and obtain the appointment of a receiver for the Property and of the earnings, income, issue and profits of it, with the powers as the court making the appointments confers. Mortgagor hereby irrevocably consents to such appointment and waives notice of any application therefor.

NO WAIVER. No delay or failure of Lender to exercise any right, remedy, power or privilege hereunder shall affect that right, remedy, power or privilege nor shall any single or partial exercise thereof preclude the exercise of any right, remedy, power or privilege. No Lender delay or failure to demand strict adherence to the terms of this Security Instrument shall be deemed to constitute a course of conduct inconsistent with Lender's right at any time, before or after an event of default, to demand strict adherence to the terms of this Security Instrument and the Related Documents.

JOINT AND SEVERAL LIABILITY. If this Security Instrument should be signed by more than one person, all persons executing this Security Instrument agree that they shall be jointly and severally bound, where permitted by law.

SURVIVAL. Lender's rights in this Security Instrument will continue in its successors and assigns. This Security Instrument is binding on all heirs, executors, administrators, assigns and successors of Mortgagor.

NOTICES AND WAIVER OF NOTICE. Unless otherwise required by applicable law, any notice or demand given by Lender to any party is considered effective when it is deposited in the United States Mail with the appropriate postage, mailed to the address of the party given at the beginning of this Security Instrument unless an alternative address has been provided to Lender in writing. To the extent permitted by law, Mortgagor waives notice of Lender's possession of this Security Instrument, defenses based on suretyship, any defense arising from any election by Lender under the United States Uniform Trust Code, Uniform Commercial Code, as amended in the state where Lender is located or under applicable law or its equity, demand, notice of acceleration, notice of assignment, prepayment, protest, notice of dishonor and any other notice.

TO THE EXTENT PERMITTED BY LAW, MORTGAGOR WAIVES ANY RIGHT TO NOTICE, OTHER THAN THE NOTICE PROVIDED ABOVE, AND WAIVES ANY RIGHT TO ANY HEARING, JUDICIAL OR OTHER, AND TO THE LENDER EXERCISING ITS RIGHTS UNDER THIS SECURITY INSTRUMENT.

WAIVER OF DOWER AND CURTESY. To the extent each signatory to this Security Instrument possesses them, each signatory to this Security Instrument hereby waives all rights in the nature of dower and curtesy in the Property.

LENDER'S EXPENSES. Mortgagor agrees to pay all expenses incurred by Lender in connection with enforcement of its rights under the terms of this Security Instrument or in the event Lender is made party to any litigation because of the existence of the instrument or this Security Instrument, as well as court costs, collection charges and reasonable attorneys' fees and disbursements.

ASSIGNABILITY. Lender may assign or otherwise transfer this Security Instrument or any of Lender's rights under this Security Instrument without notice to Mortgagor. Mortgagor may not assign this Security Instrument or any part of the Security Instrument without the express written consent of Lender.

GOVERNING LAW. This Security Instrument will be governed by the laws of the State of South Carolina including all proceeds as a result of this Security Instrument.



SEVERABILITY: If a court of competent jurisdiction determines any term or provision of this Security Instrument is invalid or prohibited by applicable law, that term or provision will be ineffective to the extent required. Any term or provision that has been determined to be invalid or prohibited will be severed from the rest of the Security Instrument without invalidating the remainder of either the affected provision or this Security Instrument.

WAIVER OF JURY TRIAL: All parties to this Security Instrument hereby knowingly and voluntarily waive, to the fullest extent permitted by law, any right to trial by jury of any dispute, whether in contract, tort, or otherwise, arising out of, in connection with, related to, or incidental to the relationship established between them in this Security Instrument or any other instrument, document or agreement executed or delivered in connection with this Security Instrument or the related transactions.

ORAL AGREEMENTS DISCLAIMER: This Security Instrument represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

ADDITIONAL PROVISIONS, PROMISSORY NOTE DATED JANUARY 15, 2010 IN THE AMOUNT OF \$1,750,000.00 IN THE NAME OF HIGH POINTE, LLC.

By signing this Security Instrument, each Member acknowledges that all provisions have been read and understood. Signed, sealed and delivered by them (signature)

HIGH POINTE LLC

By: JAMES N WORMAN Date: 1-15-10
As Member

By: WILLIAM W HUSS JR Date: 1-15-10
As Member

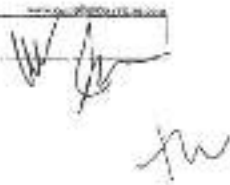
Witnessed by:

Name: Mary O'Neill Date: 1-15-10

By: THOMAS P WINKOPP Date: 1-15-10
As Manager

Name: Thomas P Winkopp Date: 1-15-10

© 2004-2009 Republic Services, Inc. All rights reserved. www.republicservices.com
Document Title: Security Instrument - 1-15-10



BUSINESS ACKNOWLEDGMENT

STATE OF SOUTH CAROLINA }
COUNTY OF GREENVILLE }

This instrument was acknowledged on the 15th day of January, 2010, by

JAMES N WORKMAN, Member, THOMAS P WENKOPP, Manager, and WILLIAM W HUSS JR, Member on behalf of HIGH POINTE LLC, a South Carolina Limited Liability Company, who personally appeared before me.

In witness whereof, I hereunto set my hand and official seal.

My commission expires: 5/19/2012

[Signature]
Greenville County, SC
Identification Number 2382007



THIS INSTRUMENT PREPARED BY:
GREER STATE BANK
111 WEST POINSETT STREET
GREER, SC 29650

AFTER RECORDING RETURN TO:
GREER STATE BANK
111 WEST POINSETT STREET
GREER, SC 29650

© 2004-2009 Computer Systems, Inc. 10/24/09 10:00:11 AM
Last Updated: 10/24/09

Printed

www.greerstatebank.com

[Handwritten initials]

EXHIBIT A

Greer State Bank Property

All that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Oconee, being known and designated as 1.112 acres, more or less, of High Pointe as shown on a plat thereof entitled, "Proposed Site Survey for High Pointe, LLC", dated December 7, 2009 and recorded in the Office of the Register of Deeds for Oconee in Plat Book 16307 at Page 7, and having the metes and bounds, courses and distances as upon said plat appear.

AND ALSO:

All those certain easements and right-of-way created under Declaration of Easement by High Pointe, LLC dated January 15, 2010, and recorded in the Office of the Register of Deeds for Oconee County in Book 1756, at Page 12.

All rights of Developer that would apply to or benefit the property under the Master Deed of HighPointe of Certain Horizontal Property Regime dated July 29, 2008 and recorded July 31, 2008 in the Office of the Register of Deeds for Oconee County in Book 1674, at Page 126.

FILED - ORIGINAL
OCONEE COUNTY, S.C.
REGISTER OF DEEDS
2010 JAN 15 PM 3:03

FILED FOR RECORD
SCONEE COUNTY, S.C.
REGISTER OF DEEDS

200 JAN 15 P 3 03

008046

Blom
12.00



Doc ID: 0080289006 Type: MTG

SK 2834 PO 170-175

(Space Above This Line For Recording Data)

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS ("Assignment"), is given on January 15, 2014 by HIGH POINTE LLC, a South Carolina Limited Liability Company, whose address is 602-5 COLLEGE AVENUE, Clemson, South Carolina 29631 ("Owner") to GREER STATE BANK which is organized and existing under the laws of the state of South Carolina, and whose address is PO BOX 1029, GREER, South Carolina 29612 ("Lender"). The Lender is, or is about to become, the holder of the following Mortgage dated January 15, 2011 in the amount of One Million Seven Hundred Fifty Thousand and 00/100 Dollars (\$1,750,000.00) ("Mortgage") executed by Owner covering the following described property:

Address: BUILDING 1-KHAKI CAMPBELL WAY (HIGH POINTE DEVELOPMENT), Socastee, South Carolina 29678

Legal Description: SEE ATTACHED EXHIBIT "A"

("Secured Property") which secures the following Note(s):

- Loan with a principal amount of \$1,750,000.00

and any other indebtedness of Owner to Lender, whether now or subsequently owing or to become due and no matter how created. The Secured Property has been claimed by the Owner under a lease(s) which may be described as follows:

MEMORANDUM OF AGREEMENT BETWEEN TRI-COUNTY TECHNICAL COLLEGE AND HIGH POINTE, LLC DATED MARCH 12, 2008 RELATING TO THE BRIDGES TO CLEMSON UNIVERSITY PROGRAM AS AMENDED.

Lender, as a condition of making the above loan(s), has required an assignment of the lease(s) and the rents, income and profits derived from the use of the Secured Property and every part thereof, as additional security for said loan(s).

In consideration of the recitals above and as additional security for the indebtedness above, Owner assigns, transfers, sets over to, and grants Lender a security interest in the lease(s) described herein and any renewals, renewals or extensions thereof, together with any other lease(s), whether written or unwritten, entered into before or after this Assignment and describing any part of the Secured Property, and all rents, income and profits derived from the Secured Property and any portion thereof.

OWNER'S DUTIES; DEFAULT. With respect to any lease(s) entered into before or after this Assignment covering any part of the Secured Property, Owner represents to and agrees with Lender that as long as any indebtedness of Owner to Lender shall remain unpaid, Owner shall not, without the written consent of Lender: (a) cancel any lease(s); (b) accept a surrender of any lease(s); (c) modify or alter any lease(s) in any way, either orally or in writing; (d) include a provision in any lease(s); (e) consent to any assignment of the lease's interest in

any lease(s), or to any subletting thereunder; (f) collect or accept payment of rent, income or profit under any lease(s) for more than one (1) month in advance of the due date; (g) make any other assignment, pledge, encumbrance, or other disposition of any lease(s), or of the rents, income and profits derived from the use of the Secured Property; or, (h) fail to keep the Secured Property free and clear of all liens and encumbrances. Any of the above acts, if done without the written consent of Lender, shall be null and void and shall constitute default under the above said Note(s) and Mortgage and this Assignment.

OWNER'S WARRANTIES. Owner further covenants with and warrants to Lender that: (a) the said lease(s) are valid, presently in full force and effect and that there are no defaults now existing thereunder, and (b) Owner has not: (1) assigned or granted any prior assignment, encumbrance, or security interest concerning any lease(s) or the rents thereunder; (2) performed any acts or executed any other instruments or agreements which would limit and prevent Lender from enjoying the benefit of and exercising its rights conferred by this Assignment; (3) executed or granted any modification of any lease(s) either orally or in writing; and (c) the Secured Property and the rents, income and profit derived from the use of the Secured Property are free of liens, encumbrances, claims and setoffs.

REMEDIES. It is mutually agreed between Lender and Owner that until a default or breach shall occur in the performance of Owner's covenants hereunder, or any default shall occur under the Mortgage or any loan agreement between Lender and Owner pertaining to any indebtedness referred to herein, or any default shall occur in the making of any of the payments provided for in the above described Mortgage or Note, Owner may receive, collect and enjoy the rents, income and profits accruing from the Secured Property, but not more than one (1) month in advance of the due date. In the event of any such default or breach, Lender may, at its option, immediately terminate, receive and collect all rents, income and profits from the Secured Property as they come due under the lease(s) described herein and all renewals and extensions thereof, and under any other lease(s) heretofore or hereafter entered into covering any part of the Secured Property, and Lender shall thereafter continue to receive and collect all such rents, income and profits as long as such default or breach shall exist, and during the period of any foreclosure proceedings and throughout any applicable redemption period if there is a deficiency after foreclosure and during all such periods. Lender may, but is not obligated to, apply some or all of the rents, income and profits received by Lender to trust in the Property, including, but not limited to, payment of property taxes.

NOTICE. In the event of any such default or breach, Owner expressly authorizes Lender, at its option, to enter upon the Secured Property or any part thereof, by its officers, agents, or employees, for the collection of the rents, income and profits due for the operation and maintenance of the Secured Property. Owner authorizes Lender in general to perform all acts necessary for the operation and maintenance of the Secured Property in the same manner and to the same extent as if it were the owner of the same. After payment of all charges and expenses, including, without limitation, reasonable attorney's fees, for its maintenance and operating expenses, the Lender shall credit the net amount of such rents, income and profits to the credit of Lender's exercise of this Assignment to any amounts due Lender under the terms and provisions of the above said Note(s) and Mortgage, and in the event of any foreclosure sale, to any deficiency of such mortgage(s) secured. The manner of the application of such net income and the item or items which it shall be applied to shall be within the sole discretion of the Lender, and Lender shall be accountable only for moneys actually received and not for moneys not so received under this Assignment. Such entry and taking possession of the Secured Property or any part thereof by Lender shall be made by actual entry and possession or by written notice served personally upon or sent by registered mail to the last owner of the Secured Property appearing on the records of the Lender, as the Lender may determine, and no further authorization or notice shall be required.

WAIVER OF NOTICE. TO THE EXTENT PERMITTED BY LAW, OWNER WAIVES ANY RIGHT TO NOTICE, OTHER THAN THE NOTICE PROVIDED ABOVE, AND WAIVES ANY RIGHT TO ANY HEARING, JUDICIAL OR OTHERWISE, PRIOR TO THE LENDER EXERCISING ITS RIGHTS UNDER THIS ASSIGNMENT.

LENDER AS SUCCESSOR TO THE DEBTOR PROPERTY. It is mutually agreed that nothing contained in the Remedies and Enforcement provisions shall in any way diminish, restrict, or affect any rights of Lender under

Date

the lease(s) referred to herein if Lender should become the owner of the Secured Property after the expiration of any redemption period in connection with any foreclosure proceedings.

SUBSEQUENT LEASES. Owner agrees to promptly inform Lender of, and to promptly transfer, assign and deliver to the Lender, any subsequent lease(s) of the Secured Property or any part thereof, and to make, execute and deliver to the Lender, upon demand, any and all documents, agreements and instruments as may, in Lender's opinion, be necessary to protect the Lender's rights under this Assignment. Owner's failure to comply with the agreements herein made shall not impair Lender's rights hereunder with respect to any such subsequent lease(s), nor shall such failure in any way affect the applicability of this Assignment to such lease(s) and the rentals receivable thereunder.

PROTECTION OF LENDER'S RIGHTS AND INTERESTS; NO WAIVER; DEFAULT. Owner further agrees to perform and discharge each and every obligation, covenant, and agreement required to be performed by the Landlord under the lease(s) referred to herein, and should Owner fail to do so, the Lender, without obligation to do so and without releasing Owner from any such obligation, may make or do the same in such manner and to such extent as the Lender deems necessary to protect its rights and interests under this Assignment. Nothing in this Assignment shall be construed to require the Lender to perform any of the terms and provisions contained in the lease(s), or otherwise to impose any obligation or liability upon the Lender. Neither the performance nor the non-performance by the Lender of Owner's obligations shall be deemed a waiver of any default by the Owner under the Mortgage, this Assignment or under the Note(s). Owner agrees to indemnify and hold harmless Lender from all liability, loss, or damage, which may be incurred under the lease(s) or by reason of this Assignment. If Lender incurs any expenses due to performing Owner's obligations under the lease(s) and Assignment, or incurs damages, attorney fees or costs due to claims or demands under the lease(s) and Assignment, such amounts shall be payable on demand by Owner to Lender. Any default by Owner in the performance of any of the obligations in this Assignment shall be a default under the terms of the said Mortgage, existing Lender to exercise all rights and remedies provided by the Mortgage, this Assignment, and under the Note(s).

LESSEE PAYMENTS TO LENDER. Owner irrevocably covenants and agrees that any lessee(s) under any of the lease(s) referred to herein shall, upon demand and notice from Lender of Owner's default under said Note(s), Mortgage, or this Assignment, pay all rents, issues, and profits under said lease(s) to Lender, without any obligation upon any such lessee(s) in determining the actual evidence of any default by Owner.

LENDER ASSIGNMENT OF LEASES. Owner agrees that Lender shall have the right to assign Owner's rights, title and interest in the lease(s) referred to herein to any subsequent holder of the Mortgage or Note(s) and to assign the same to any person or entity lawfully to the Secured Property through foreclosure.

SCOPE OF ASSIGNMENT OF LEASES AND RENTS. This Assignment extends to and includes every lease or rental agreement, whether written or unwritten, now existing or hereafter entered into, covering any part of the Secured Property, which lease or rental agreement, the term "lease" or "leases" includes all such rental agreements. If no specific lease or rental agreement is specified in this Assignment, this Assignment shall be a general assignment of all leases and rental agreements covering the premises described herein.

LENDER'S RIGHTS AND REMEDIES. The rights and remedies of the Lender under this Assignment are cumulative, and, in addition to any other rights and remedies which Lender has under the Note(s), Mortgage, Loan Agreement, and any related documents.

SUCCESSORS AND ASSIGNS. All covenants and agreements contained in this Assignment shall apply to and bind the parties, heirs, assigns and successors, and assigns of the respective parties.

ENTIRE AGREEMENT; MODIFICATIONS; SEVERABILITY. This Assignment shall constitute the entire agreement between Lender and Owner. Any modification of this Assignment shall be binding only if placed in writing and signed by the authorized signatory. The invalidity of any provision of this Assignment shall not affect the validity of any other provision.

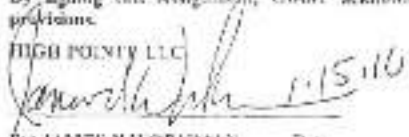


PARAGRAPH HEADINGS. The titles to the paragraphs of this Assignment are solely for the convenience of the parties and shall not be used to interpret this Assignment.

GOVERNING LAW. This Assignment shall be interpreted, and the rights of the parties determined, under the laws of the State of South Carolina.

ORAL AGREEMENTS DISCLAIMER. This Assignment represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

By signing this Assignment, Owner acknowledges reading, understanding, and agreeing to all its provisions.

HIGH POINTY LLC
 1.15.10

By: JAMES M WORKMAN Date
Its Member

 1.15.10

By: THOMAS P WINKOPP Date
Its Manager

 1.15.10

By: WILLIAM W HUSS JR Date
Its Member

Witnessed by:
 1.15.10

Name: Date:

 1.15.10

Name: Date:



EXHIBIT A

Greer State Bank Property

All that certain piece, parcel or lot of land situated, lying and being in the State of South Carolina, County of Oconee, being known and designated as 1.112 acres, more or less, of High Point as shown on a plat thereof entitled, "Proposed Site Survey for High Point, LLC", dated December 7, 2009 and recorded in the Office of the Register of Deeds for Oconee in Plat Book 15329, at Page 7, and having the notes and bounds, courses and distances as upon said plat appear.

AND ALSO:

All those certain easements and right-of-way created under Declaration of Easement by High Point, LLC dated January 15, 2010, and recorded in the Office of the Register of Deeds for Oconee County in Book 1756, at Page 122.

All rights of Developer that would apply to or benefit the property under the Master Deed of HighPoint of Division Horizontal Property Regime dated July 29, 2008 and recorded July 31, 2008 in the Office of the Register of Deeds for Oconee County in Book 1674, at Page 124.

FILED IN THE OFFICE OF THE
REGISTER OF DEEDS
OCONEE COUNTY, S.C.
2010 JAN 15 P 3:03

**MORTGAGE, SECURITY AGREEMENT
AND ASSIGNMENT OF LEASES, RENTS AND PROFITS**

**NOTE: FOR INDEXING PURPOSES THIS MORTGAGE SHOULD
BE RECORDED IN THE MORTGAGOR INDEX IN THE NAMES
OF POINTE WEST, INC., AND VALLEY WALK, LLC**

**THE MAXIMUM INDEBTEDNESS SECURED BY THIS
MORTGAGE IS EIGHT HUNDRED THOUSAND AND NO/100
DOLLARS (\$800,000.00).**

THIS MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF LEASES, RENTS AND PROFITS (hereinafter referred to as the "Mortgage") is made and entered into this 19 day of June, 2008, by VALLEY WALK, LLC, a South Carolina limited liability company (hereinafter referred to as the "Mortgagor"), whose address is 1376 Tiger Boulevard, Clemson, South Carolina 29631, and COMMUNITYSOUTH BANK AND TRUST (hereinafter referred to as the "Mortgagee"), whose address is 6650 Calhoun Memorial Highway, Easley, South Carolina 29640.

**ARTICLE ONE
GRANT OF MORTGAGE AND SECURITY INTEREST**

1.1 **GRANT.** In order to secure and enforce the payment, performance and observance of the Obligations set forth hereinafter, and for and in consideration thereof and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Mortgagor does hereby execute and deliver this Mortgage to the Mortgagee and does hereby grant, bargain, mortgage, sell, transfer, convey, assign, warrant and confirm unto the Mortgagee, its successors and assigns, all of the Mortgagor's right, title and interest in and to the Property identified hereinafter, together with and including a first security interest in that portion of the Property comprising the Collateral (as defined hereinafter), to HAVE AND TO HOLD the Property, all parts thereof, and all and singular the rights, hereditaments and appurtenances appertaining or belonging thereto, unto the Mortgagee, its successors and assigns, to its own use and benefit forever, subject, however, to the terms and conditions herein.

1.2 **OBLIGATIONS SECURED.** The Obligations secured by this Mortgage consist of the following (hereinafter collectively referred to as the "Obligations"):

a. **The Obligation Secured.** The guaranty of payment of even date herewith of up to EIGHT HUNDRED THOUSAND AND NO/100 DOLLARS (\$800,000.00) of the indebtedness evidenced by that certain Irrevocable Standby Letter of Credit Reimbursement Agreement (hereinafter referred to as the "LOC Agreement") dated December 18, 2007 executed by POINTE WEST, INC., a South Carolina corporation ("Borrower") and payable to the Mortgagee in the maximum principal sum of ONE MILLION SIX HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,600,000.00), together with interest thereon, any renewals, extensions or modifications thereof, and all debts, liabilities and obligations of the Borrower thereunder, and which LOC Agreement is made a part hereof by reference to the same extent as though set in full herein;

b. **Future Loans and Advances.** The payment of all future advances or re-advances that may subsequently be made by the Mortgagee to the Mortgagor or Borrower evidenced by the LOC Agreement, or any promissory notes, or by any other means, and all renewals or extensions thereof, all

of which shall be secured hereunder in accordance with Section 29-3-50, Code of Laws of South Carolina 1976, as amended.

c. Loan Documents. The payment, performance and observance of all terms, provisions, covenants, conditions, representations and warranties set forth herein and in the LOC Agreement, any Letter of Credit Application between the Mortgagee and Borrower, and all Guaranty Agreements, whether between Mortgagee and Mortgagee or between Mortgagee and other guarantors, collateral pledge agreements, collateral assignment and security agreements of any nature and kind now or hereafter existing in connection with, as evidence of, or as security for the LOC Agreement (all of the foregoing, including the LOC Agreement and this Mortgage, being hereinafter referred to from time to time collectively as the "Loan Documents");

d. Other Indebtedness. The payment, performance and observance of other indebtedness, liabilities and obligations of the Mortgagee and Borrower to the Mortgagee, now or hereafter existing, whether direct or indirect, whether primary, secondary, joint, several, joint and several, liquidated, unliquidated, fixed or contingent, whether arising hereunder, under any of the Loan Documents, or otherwise, and including without limitation all indebtedness, liabilities or obligations of any guarantors or any other persons whomsoever owed to the Mortgagee pursuant to the Loan Documents, together with and including all attorneys' fees, court costs and other charges and expenses arising out of or attributable to any of the foregoing.

1.3 THE PROPERTY. The Property mortgaged and conveyed to the Mortgagee hereunder consists of the following (herein collectively referred to as the "Property"):

a. The Land. All of the land located in the County of Pickens, State of South Carolina described fully in "Exhibit A" attached hereto and incorporated herein (hereinafter referred to as the "Land");

b. The Improvements. All buildings, structures and improvements of every nature and kind now or hereafter erected or situate on the Land (hereinafter referred to as the "Improvements");

c. The Accessories. All fixtures, materials, machinery, equipment, appliances, systems, goods, furniture, furnishings, building materials, inventory and personal property now or hereafter attached to, located at, stored upon, or used or intended to be used in connection with, or with the operation of, the Land and/or the Improvements, or the construction thereof, in which the Mortgagee now has, or at any time hereafter acquires an ownership interest, including without limitation all heating, air conditioning, lighting, refrigeration, plumbing, ventilation, incinerating, water-heating, radio, communications, electrical, and air conditioning equipment, and all appliances, furniture, engines, machinery, elevators, pumps, motors, compressors, boilers, condensing units, doors, windows, window screens, tables, chairs, drapes, rods, beds, springs, mattresses, lamps, bookcases, cabinets, sprinklers, hoses, tools, lawn equipment, sofas, dressers, mirrors, televisions, radios, speakers, electrical wiring, pipe, and floor coverings, together with all contract rights to acquire any of the foregoing and all deposits and payments made under contract for the acquisition of the same, and all renewals, replacements and substitutions thereof and additions thereto; all of which shall be deemed a part of and affixed to the Land (hereinafter referred to collectively as the "Accessories");

IN WITNESS WHEREOF, this Mortgage and Security Agreement has been duly executed by the Mortgagor as of the date first written above.

IN THE PRESENCE OF:

Jeff Chandler
Kevin Cowart
Mary O'Neill

STATE OF SOUTH CAROLINA)

COUNTY OF Pickens)

VALLEY WALK, LLC
a South Carolina Limited Liability Company

By: _____ (SEAL)
Thomas P. Winkopp
Manager

) PROBATE

PERSONALLY appeared deponent and made oath that deponent saw the within named Valley Walk, LLC, a South Carolina Limited Liability Company, by Thomas P. Winkopp, its duly authorized manager, sign, seal and as its act and deed deliver the within Mortgage and Security Agreement, and that the deponent, with the other witnesses whose names are subscribed above, witnessed the execution thereof.

SWORN to before me this
10th day of June, 2008
Kelly R. Vaughn (SEAL)
Notary Public for South Carolina
My commission expires: March 15, 2015



The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty (30) days after the sale of the mortgaged property apply to the court of an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. **MORTGAGOR HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.**

All that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Pickens, being known and designated as Lot 1 & Portion of Lot 2 & 3 1.042 acres and described as follows:

BEGINNING on the northeast corner of subject property located on Sunset Avenue with a bearing of S87°05'22"W, running 9.14 feet to a point, thence running S0°30'30"W, 20.35 feet to a point, thence running S03°03'15"W, 24 feet to a point, thence running S03°04'46"E, 19 feet to a point, thence around a curve 31.70 feet said curve having a radius of 67.89 feet and a chord of 31.42 feet and a bearing S20°35'11"E, thence running S36°36'11"E, 17.87 feet to a point, thence running S36°36'11"E, 17.88 feet to a point, thence running S62°05'49"W, 4.75 feet to a point, thence running S88°13'41"W, 27.24 feet to a point, thence running N86°57'57"W, 133.84 feet to a point, thence turning and running S02°43'19"W, 103.15 feet to a point, thence turning and running S83°18'59"W, 94.60 feet to a point, thence turning and running N01°07'31"E, 120.75 feet to a point, thence running N01°35'43"E, 120.44 feet to a point, thence turning and running S86°52'41"E, 110.22 feet to a point, thence running S87°17'58"E, 160.15 feet to BEGINNING.

This being a portion of the property conveyed unto Valley Walk, LLC by the following deeds:

Barry F. and Karen S. Kelly recorded 3/8/05 in Deed Book 894, Page 61
Frances S. Smith recorded 3/8/05 in Deed Book 894, Page 64; and
Between the Lakes Property Management, LLC, Kevin L. Cope and Patrick J. Hunter recorded 5/9/05 in Deed Book 918, Page 105, records of Pickens County, South Carolina.

MODIFICATION AGREEMENT

This Modification Agreement entered into this 14th day of June, 2008, by and between **POINTE WEST, INC.**, a South Carolina corporation ("**Borrower**"), **COMMUNITYSOUTH BANK AND TRUST** ("**Lender**"), and **VALLEY WALK, LLC**, a South Carolina limited liability company ("**New Guarantor**").

WITNESSETH:

WHEREAS, Lender has issued an Irrevocable Stand-By Letter of Credit in the amount of ONE MILLION SIX HUNDRED THOUSAND and 00/100 Dollars (\$1,600,000.00) for the benefit of Borrower as evidenced by a Letter of Credit Reimbursement Agreement and Letter of Credit Application (the "LOC Agreements") from Borrower to Lender; and

WHEREAS, the LOC Agreements are secured by a mortgage from Faye Workman of even date therewith recorded in the Office of the Register of Deeds for Pickens County in Book 3758 at Page 334; a mortgage from Kelly Road, LLC, of even date therewith recorded in the Office of the Register of Deeds for Pickens County in Book 3758 at Page 315; and a mortgage from University Park, a South Carolina General Partnership of even date therewith recorded in the Office of the Register of Deeds for Oconee County in Book 2553 at Page 77 (collectively the "Mortgages"); and

WHEREAS, the LOC Agreements have been guaranteed by Kelly Road, LLC, University Park, a South Carolina General Partnership, Thomas P. Winkopp, James Neal Workman, Jr., and William H. Huss, Jr.;

WHEREAS, the Lender has agreed to allow Borrower to substitute real property to be mortgaged by New Guarantor for the real property mortgaged by Kelley Road, LLC as security for the LOC Agreements;

NOW, THEREFORE, in consideration of the premises and the sum of One Dollar (\$1.00), each paid to the other, the parties agree as follows:

1. The LOC Agreements and related loan documents are hereby modified and amended to substitute that certain real property identified as 105, 107 and 109 Sunset Drive, Clemson, South Carolina owned by New Guarantor for Units 811 and 823 located at 205 Kelly Road, Clemson, South Carolina, mortgaged by Kelly Road, LLC, in favor of Lender.

2. The LOC Agreements and related loan documents are hereby modified and amended to add New Guarantor as a guarantor of the LOC Agreements.

3. New Guarantor agrees to execute and delivery unto lender a mortgage, guaranty agreement and other customary and necessary documents deemed desirable by Lender to perfect the agreements set forth in this instrument.

4. All of the terms and conditions of the LOC Agreements and related loan documents not inconsistent herewith are incorporated herein by reference and made a part hereof to the same extent as if set forth in their entirety.

5. All other documents executed and delivered in connection with the LOC Agreements are hereby confirmed and modified so as to secure and apply to the substitute of collateral provided for herein.

IN WITNESS WHEREOF, the parties hereto have affixed their hands and seals the day and year first above written.

In the Presence of:

Cindy S. Cooper
Bonnie J. Murray

COMMUNITYSOUTH BANK AND TRUST

BY: [Signature]
Is: CEO
Lender

In the Presence of:

May Belle
Dianne Earle

POINTE WEST, INC.
a South Carolina corporation

BY: [Signature]
Thomas P. Winkopp
President

Borrower

In the Presence of:

May Belle
Dianne Earle

VALLEY WALK, LLC
a South Carolina limited liability company

BY: [Signature]
Thomas P. Winkopp
Manager

New Guarantor/Mortgagor

Consenting:

In the Presence of:

May Belle
Dianne Earle

[Signature] (SEAL)
Thomas P. Winkopp
[Signature] (SEAL)
James Neal Workman, Jr.
[Signature] (SEAL)
William J. Huss, Jr.

In the Presence of:

May Belle
Dianne Earle

UNIVERSITY PARK
a South Carolina General Partnership

By: [Signature] (SEAL)
Thomas P. Winkopp, Partner

By: [Signature] (SEAL)
John Winkopp, Partner

By: [Signature] (SEAL)
Wallace March, Partner

IN THE PRESENCE OF:

Max Ball
Deanne E. Eade

KELLY ROAD, LLC
a South Carolina Limited Liability Company
By: James Neal Workman, Jr. (SEAL)
Manager

STATE OF SOUTH CAROLINA }
 }
COUNTY OF OCONEE }

BB&T



Doc ID: C01076900007 Type: MTR

SK 2693 pg 165-171

MORTGAGE OF REAL ESTATE

THIS MORTGAGE, made this 6th day of January, 2009, by POINTE WEST, INC., a South Carolina corporation (hereinafter referred to as "Mortgagor"), granted and given to BRANCH BANKING AND TRUST COMPANY (hereinafter referred to as "Mortgagee"), a corporation organized and existing under the laws of the State of North Carolina, whose address is P O Box 1290, Whiteville, NC 28472.

WHEREAS, Mortgagor is indebted to Mortgagee, as evidenced by a certain promissory note dated of even date herewith, executed in favor of Mortgagee in the principal sum of Six Million One Hundred Ninety Thousand Four Hundred Seventy-Five Dollars (\$6,190,475), and any renewals, extensions or modifications thereof, the terms of which are incorporated herein by reference. High Pointe, LLC ("High Pointe") is indebted to Mortgagee, as evidenced by those three (3) certain promissory notes each dated of even date herewith, executed in favor of Mortgagee, in the principal sum of Three Million One Hundred Forty-Five Thousand Dollars (\$3,145,000), Six Million Five Hundred Thousand Dollars (\$6,500,000) and Seven Million Six Hundred Thousand Dollars (\$7,600,000), respectively, and any renewals, extensions or modifications thereof, the terms of which are incorporated herein by reference. Harts Cove Development, LLC ("Harts Cove") and together with the Mortgagor and High Pointe, are individually referred to as a "Borrower" and collectively referred to as, the "Borrowers") is indebted to Mortgagee, as evidenced by a certain promissory note dated of even date herewith, executed in favor of Mortgagee in the principal sum of One Million Four Hundred Thousand Dollars (\$1,400,000) and any renewals, extensions or modifications thereof, the terms of which are incorporated herein by reference. Where used herein, the term "Note" or "Notes" shall be deemed to include the notes above described, along with any other notes, additional advance agreements, or other documents now or hereafter evidencing any debt whatsoever incurred by Mortgagor or any Borrower and payable to Mortgagee, including without limitation all indebtedness and obligations of the Mortgagor or any Borrower to Mortgagee (or an affiliate of Mortgagee) under any interest rate swap transactions, interest rate cap and/or floor transactions, interest rate collar transactions, swap agreements (as defined in U.S.C. § 101) or other similar transactions or agreements, including without limitation any ISDA Master Agreement executed by Mortgagor or any Borrower and all schedules and confirmations entered into in connection therewith, hereinafter collectively referred to as a "Hedge Agreement", the terms of which are incorporated herein by reference.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that the Mortgagor, for and in consideration of the aforesaid indebtedness and in order to secure the payment thereof together with any renewals or extensions or modifications thereof, and also to secure in accordance with § 29-3-50, as amended, of the Code of Laws of South Carolina (1976) or any such successor statute as may apply:

1. All future advances and readvances that may subsequently be made to the Mortgagor or any Borrower evidenced by the Notes and by all renewals and extensions thereof; and
2. All other indebtedness of Mortgagor or any Borrower to Mortgagee, now or hereafter existing, whether direct or indirect, including without limitation any advances made by Mortgagee to pay drawings on any irrevocable standby or commercial letter of credit issued on the account of the Mortgagor or any Borrower pursuant to an application therefor, the maximum amount of all indebtedness outstanding at any one time secured hereby not to exceed \$50,000,000 plus interest thereon; all charges and expenses of collection incurred by Mortgagee including court costs and reasonable attorneys' fees, has granted, bargained, sold, assigned, released and does by these presents grant, bargain, sell, assign and release unto the Mortgagee, its successors and assigns the following described property:

See Exhibit A attached hereto and incorporated herein.

Together with all and singular improvements thereon and the rights, members, accretions and appurtenances to the same belonging or in any way appertaining; all the rents, issues, and profits thereof (provided, however that, unless otherwise agreed, the Mortgagor shall be entitled to collect and retain the said rents, issues, and profits until default hereunder); and including all heating, plumbing, and lighting fixtures and equipment now or hereafter attached to or used in connection with the real estate herein described (herein collectively the "Property").

TO HAVE AND TO HOLD, all the said Property unto the Mortgagee, its successors and assigns forever.

The Mortgagor covenants that it is lawfully seized of the premises herein above described in fee simple absolute, that Mortgagor has good, right, and lawful authority to sell, convey, or encumber the same, and that the premises are free and clear of all liens and encumbrances whatsoever except as listed in the title opinion or title insurance policy which Mortgagee has obtained in the transaction in which Mortgagee obtained this Mortgage. The Mortgagor further covenants to warrant and forever defend title to the premises as herein conveyed unto the Mortgagee, from and against all persons whomsoever lawfully claiming the same or any part thereof.

The Mortgagor covenants and agrees as follows:

1. That Mortgagor will, and will cause the other Borrowers to, promptly pay the principal of and interest on the indebtedness evidenced by the said Notes and any subsequent note or agreement evidencing additional advances, at the time and in the manner therein provided. Mortgagor shall timely pay and perform any obligation, covenant or warranty contained not only in this mortgage but also any other mortgage, or writing which gives rise to, or which may constitute a lien against the Property. Upon request of Mortgagee, Mortgagor promptly shall furnish satisfactory evidence of such payment or performance. Mortgagor shall not enter into,

13.00
008160
29633
Oconee, SC
Page 1
PO Box 1633

FILED FOR RECORD
DOOR COUNTY, SC
REGISTER OF DEEDS
JAN 14 2009
L-1111

SPC011076900007 (AM) (01/14/09)

Mortgagee. Mortgagee promptly shall furnish satisfactory evidence of such payment or performance. Mortgagee shall not enter into, terminate, amend or amend any material lease or contract affecting the Property or any part thereof without the prior written consent of the Mortgagee.

2. That the lien of this instrument shall remain in full force and effect during any postponement or extension of the time of payment of or any other modification relating to the indebtedness or any part thereof secured hereby (sometimes hereinafter collectively referred to as the "Debt").

3. That Mortgagee will pay as they become due all mortgage loan insurance premiums, taxes, assessments, water rates, and other governmental or municipal charges, fines or impositions, assessed against the property hereby mortgaged. If the Mortgagee fails to make any payments provided for in this section or any other payments for taxes, assessments, or the like, the Mortgagee may pay the same, and all sums so paid shall bear interest at the same rate as the principal debt secured hereby (from the date of such advance) and shall be secured by this mortgage. Any award for the taking of, or damages to, all or any part of the Property or any interest therein upon the lawful exercise of the power of eminent domain shall be payable solely to Mortgagee, which may apply the sums so received to payment of the Debt.

4. That Mortgagee will keep the Property in as good order and condition as it is now, reasonable wear and tear excepted, and will not commit or permit any waste thereof. Mortgagee may at any reasonable time and from time to time make or cause to be made reasonable entries upon, investigations, and inspections of the Property, including without limitation any inspections or investigations such as sampling and testing which may be necessary or desirable to review compliance with Environmental Laws.

5. That Mortgagee will produce and maintain fire and such other hazard insurance as the Mortgagee may require on the improvements which form a part of the Property, now or hereafter on the Property, and will pay promptly when due any premiums therefor. If Mortgagee fails to do so, the Mortgagee may cause the same to be done and reimburse itself for such premiums and expenses, and the same shall be secured by this mortgage. All insurance shall be carried in companies approved by the Mortgagee and the policies and renewals thereof shall be held by the Mortgagee and have attached thereto loss payable clauses (including New York long form) in favor of and in form acceptable to the Mortgagee. In event of loss, Mortgagee will give immediate notice by mail to the Mortgagee, who may make proof of loss if that is not promptly by the Mortgagee, and each insurance company concerned is hereby authorized and directed to make payments for such loss directly to the Mortgagee and Mortgagee jointly, and the insurance proceeds, or any part thereof, may be applied by the Mortgagee at its option either to the reduction of the indebtedness hereby secured or to the restoration of the property damaged.

6. That Mortgagee hereby assigns all the rents, issues, and profits of the Property from and after any default hereunder, and should legal proceedings be instituted pursuant to this assignment, then the Mortgagee shall have the right to have appointed a receiver of the rents, issues, and profits, who, after deducting all charges and expenses attending such proceedings and the execution of his trust as receiver, shall apply the residue of the rents, issues, and profits toward the payment of the debt secured hereby. Mortgagee hereby appoints Mortgagee as Mortgagee's attorney in fact to collect any rents and profits, with or without suit, and to apply the same, less expenses of collection to any indebtedness owing on the Notes in any manner as Mortgagee may desire. All the fixtures and equipment that comprise a part of the Property and its proceeds, insofar as permitted by law, be deemed to be affixed to the aforesaid land and conveyed therewith. As to the balance of the indebtedness this Mortgage shall be considered to be a security agreement that creates a security interest in such fixtures for the benefit of Mortgagee. In that regard, Mortgagee shall have all of the rights and remedies of a secured party under the South Carolina Uniform Commercial Code. Mortgagee hereby authorizes Mortgagee to file all UCC Financing Statements and other documents reasonably necessary to create, perfect and maintain the security interest created hereby. However, to the extent allowed by law, this Mortgage shall be a financing statement sufficient to perfect and maintain any security interest created hereby in the Property and its proceeds.

7. That Mortgagee will pay as they become due the principal and interest on all notes, obligations, contracts or agreements, secured by any mortgage, lien, or security interest having priority over this mortgage as to the Property described herein. If the Mortgagee fails to make any of the payments as provided herein, Mortgagee may pay the same and add any amounts so paid to the principal debt, and all sums so paid shall bear interest at the same rate as the principal debt secured hereby and shall be secured by this mortgage.

8. Mortgagee for itself, its successors, and assigns, warrants and agrees that (a) neither Mortgagee nor any other person has used or installed any Hazardous Materials (as hereinafter defined) on the Property or received any notice from any governmental agency, entity or other person with respect to Hazardous Materials on, from or affecting the Property; (b) neither Mortgagee or any other person has violated any applicable Environmental Laws (as hereinafter defined) relating to or affecting the Property; (c) the Property is presently in compliance with all applicable Environmental Laws; there are no circumstances presently existing upon or under the Property, or relating to the Property which violate any applicable Environmental Laws, and there is not now pending, or threatened, any action, suit, investigation or proceeding against Mortgagee relating to the Property (or against any other party relating to the Property) seeking to enforce any right or remedy under any of the Environmental Laws; (d) the Property shall be kept free of Hazardous Materials, and shall not be used for generation, manufacture, transport, treat, store, handle, dispose, or process Hazardous Materials; (e) Mortgagee shall not cause, permit, or the installation of Hazardous Materials in the Property nor a release of Hazardous Material onto or from the Property or under the control of Hazardous Materials on the Property; (f) Mortgagee shall at all times comply with and ensure compliance by all persons on the Property with all applicable Environmental Laws relating to or affecting the Property and shall keep the Property free and clear of all claims imposed pursuant to any applicable Environmental Laws; (g) the Mortgagee has obtained and will at all times continue to obtain and/or maintain all licenses, permits and/or other governmental or regulatory actions necessary to comply with Environmental Laws (the "Permits") and the Mortgagee is in full compliance with the terms and provisions of the Permits and will continue to comply with the terms and provisions of the Permits; (h) Mortgagee shall immediately give the Mortgagee oral and written notice in the event that Mortgagee receives any notice from any governmental agency, entity, or any other party with respect to Hazardous Materials on, from or affecting the Property and shall conduct and complete all investigations, sampling, and testing, removal, and other actions necessary to clean up and remove all Hazardous Materials on, from or affecting the Property in accordance with all applicable Environmental Laws. The Mortgagee hereby agrees to indemnify the Mortgagee and hold the Mortgagee harmless from and against any and all losses, liabilities, damages, inquiries (including, without limitation, attorneys' fees) and claims of every kind and every kind whatsoever paid, incurred or suffered by, or asserted against Mortgagee for, with respect to, or as a result of or in whole or in part, the presence, on, or under, or the escape, spillage, emission or release from the Property of any Hazardous Materials on, from or affecting the Property regardless of whether or not caused by or within the control of Mortgagee, (h) the violation of any Environmental Law relating to or affecting the Property, whether or not caused by or within the control of Mortgagee, (i) the failure by Mortgagee to comply with the terms and provisions of this paragraph, or (d) any warranty or representation made by Mortgagee in this paragraph or in any other part of this instrument in any material respect. For purposes of this Mortgage,

"Hazardous Material" means and includes petroleum products, any flammable explosives, radioactive materials, asbestos or any material containing asbestos, and/or any hazardous, toxic or dangerous waste, substance or material defined as such in (or for the purposes of) the Environmental Laws. For the purpose of this Mortgage, "Environmental Laws" means the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, any "Super Fund" or "Super Lien" law, or any other federal, state, or local law, regulation, or decree regulating, relating to, or imposing liability or standards of conduct concerning any petroleum products, any flammable explosives, radioactive materials, asbestos or any material containing asbestos, and/or any hazardous, toxic or dangerous waste, substance or material, as may now or at any time hereafter be in effect. The obligations and liabilities of Mortgagor under this paragraph shall survive the foreclosure of the Mortgage, the delivery of a deed in lieu of foreclosure, the cancellation or release of record of this Mortgage or the payment and cancellation of the Note; or if otherwise expressly permitted in writing by the Mortgagee, the sale or alienation of any part of the Property.

9. That in the event that Mortgagor or any other Borrower shall default in its obligations under this Mortgage, the Notes or other Loan Documents, and Mortgagee employs an attorney to assist in the collection of the Debt or to enforce compliance of Mortgagor with any of the provisions of this Mortgage, the Notes or other Loan Documents or in the event Mortgagee shall become parties to any suit or legal proceeding (including any proceeding conducted before any United States Bankruptcy Court) concerning the Property, concerning the lien of this Mortgage, or concerning collection of the Debt or concerning compliance by Mortgagor or other borrower named herein with any of the provisions of this Mortgage, the Notes or other Loan Documents, Mortgagee shall pay Mortgagee's reasonable attorneys' fees and all other costs that may be incurred, and such fees and costs shall be secured by this Mortgage and its payment enforced as if it were a part of the Debt. Mortgagor shall be liable for such attorneys' fees and costs whether or not any suit or proceeding is commenced.

10. That to the extent permitted by law, Mortgagee may grant releases at any time and from time to time of all or any portion of the Property (whether or not such releases are required by agreement among the parties) agreeable to Mortgagee without notice to or the consent, approval or agreement of other parties and interests, including junior lienors and purchasers subject to the lien of this Mortgage, and such releases shall not impair in any manner the validity of or priority of this Mortgage on that portion of the Property remaining subject to this Mortgage, nor release Mortgagee from personal liability for the Debt. Notwithstanding the existence of any other security interests in the Property held by Mortgagee or by any other party, Mortgagee shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies available to Mortgagee, and Mortgagee shall further have the right to determine the order in which any or all portions of the Debt are satisfied from the proceeds realized upon the exercise of any remedy it has. Mortgagor, or any party who consents to this, or any party who has actual or constructive notice hereof, hereby waives any and all rights to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

11. That Mortgagee shall be in default under this mortgage upon the occurrence of any of the following:

(a) Default in the payment or performance of any of its obligations, or of any covenant or warranty, in this mortgage, in the Notes or other documents executed in connection herewith, or in any other note of Mortgagee or any other Borrower to Mortgagee or any contract between Mortgagor or any other Borrower and Mortgagee; or in any contract between any third party and Mortgagee made for the benefit of Mortgagee; or

(b) Any warranty, representation or statement made or furnished to Mortgagee by or on behalf of Mortgagor or any Borrower in connection with this transaction proving to have been false in any material respect when made or furnished; or

(c) Loss, theft, substantial damage, destruction of or to or the Property, or the assertion or making of any levy, seizure, mechanic's or materialman's lien or attachment against the Property; or

(d) Death, dissolution, termination of existence, insolvency, business failure, appointment of a Receiver for any part of the property of, assignment for the benefit of creditors, or filing of a bankruptcy petition by or against, or the inability to pay debts in the ordinary course of business of the Mortgagor, any Borrower or any co-maker, endorser, guarantor or surety for Mortgagee or any Borrower; or

(e) Failure of a corporate Mortgagee, any Borrower or co-maker, endorser, guarantor or surety for Mortgagee to maintain its corporate existence in good standing; or

(f) Upon the entry of any monetary judgment or the assessment or filing of any tax lien against Mortgagee or any Borrower; or upon the issuance of any writ of garnishment against or attachment of any property, debts due or rights of Mortgagee or any Borrower; or

(g) The sale (including sale by deed or otherwise) from delivery of possession), transfer or encumbrance of all or any part of the Property or any interest therein, or any change in the ownership, control or management of any corporate or partnership Mortgagee, or any Borrower, without Mortgagee's prior written consent; or

(h) If Mortgagee should interfere or claim benefit of security interest, the Property or the indebtedness evidenced by the Notes unsafe or insecure; or should Mortgagee otherwise fail to pursue the prospect of payment or other performance is impaired.

12. That the Mortgagor shall hold and enjoy the premises above conveyed until there is a default under this mortgage or in the Notes secured hereby. If there is a default in any of the terms, conditions or covenants of this mortgage or of any of the Notes secured hereby, then at the option of the Mortgagee, upon ten (10) days prior notice to the Mortgagor, all sums then owing by the Mortgagor, or any Borrower or any other obligor on the Notes or any other document shall become immediately due and payable, the Mortgagee may in addition pursue all other rights and remedies available against the Mortgagor, any Borrower or any other obligor under the Notes under applicable provisions of State, Federal or local law and any other law governing the Notes. This mortgage shall remain as security for full payment of all indebtedness evidenced by the Notes and for performance of any obligation evidenced by the Notes or any document executed in connection therewith, notwithstanding the sale or release of any or all of the Property, the assumption by another party of Mortgagor's obligations under the Notes or this mortgage, the forbearance or extension of time or payment of the indebtedness evidenced by the Notes or any one of them in the relation of any party who has assumed or incurred any obligation for the repayment of any indebtedness evidenced by the Notes and secured by this mortgage. None of the foregoing shall in any way affect the full force and effect of the lien of this mortgage or upon the Mortgagee's right to any other remedies against the Mortgagor, Borrower or any other obligors under the Notes. Any forbearance by the Mortgagee in exercising any right or remedy hereunder or otherwise afforded by applicable law, shall not be a waiver of or a renunciation of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Mortgagor shall not be a waiver of Mortgagee's right to accelerate maturity of the indebtedness evidenced by the Notes or to enforce the payment or performance of any of the obligations, or of any covenant or warranty contained in the Notes or any other document related thereto.

13. That upon default hereunder, along with other remedies set out herein and in the above referenced Notes, the Mortgagee may foreclose upon the mortgaged premises and ask for a deficiency judgment pursuant to §29-3-660 of the South Carolina Code of Laws (1976). Mortgagee hereby expressly waives and relinquishes any appraisal rights which Mortgagor may have under §29-3-580 et seq., South Carolina Code of Laws (1976), as amended, and understands and agrees that a deficiency judgment, if pursued by Mortgagee, shall be determined by the highest price bid at the judicial sale of the Property. In the event that Mortgagee voluntarily or otherwise shall become parties to any suit or legal proceeding involving the Property, it shall be saved harmless and shall be reimbursed by Mortgagor for any amount paid, including all costs, charges and attorney's fees incurred in any such suit or proceeding, and the same shall be secured by this Mortgage and paid to upon demand.

14. That the covenants herein contained shall bind, and the benefits and advantages shall inure to, the respective heirs, executors, administrators, successors, and assigns of the parties hereto. Whenever used, the singular number shall be applicable to all genders and the term "Mortgagee" shall include any assignee of the indebtedness hereby secured or any transferee thereof whether by operation of law or otherwise. The liability of the Mortgage hereunder shall, if more than one, be joint and several. The designations "corporate", "corporation", and "partnership" include limited liability companies and limited liability partnerships.

15. WAIVER OF TRIAL BY JURY. UNLESS EXPRESSLY PROHIBITED BY APPLICABLE LAW, THE UNDERSIGNED HEREBY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY MATTERS OR CLAIMS ARISING OUT OF THIS MORTGAGE OR ANY DOCUMENT EXECUTED IN CONNECTION HEREWITH OR OUT OF THE CONDUCT OF THE RELATIONSHIP BETWEEN THE UNDERSIGNED AND MORTGAGEE. THIS PROVISION IS A MATERIAL INDUCEMENT FOR MORTGAGOR TO OBTAIN THE LOAN SECURED BY THIS MORTGAGE. FURTHER, THE UNDERSIGNED HEREBY CERTIFY THAT NO REPRESENTATIVE OR AGENT OF MORTGAGEE, NOR MORTGAGEE'S COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT MORTGAGEE WOULD NOT SEEK TO ENFORCE THIS WAIVER OF TRIAL BY JURY TRIAL PROVISION IN THE EVENT OF LITIGATION. NO REPRESENTATIVE OR AGENT OF MORTGAGEE, NOR MORTGAGEE'S COUNSEL, HAS THE AUTHORITY TO WAIVE, CONDITION OR MODIFY THIS PROVISION.

Waiver of Appraisal Rights. The Laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. **TO THE FULLEST EXTENT PERMITTED BY LAW AND AS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN, MORTGAGOR HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.**

IN WITNESS WHEREOF, each Mortgagor has executed this Mortgage the day and year first above written.

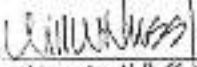
Signed, sealed and delivered in the presence of:

Signed, sealed and delivered in the presence of:

 (SEAL)
 (SEAL)

MORTGAGOR:

POINTE WEST, INC.

By:  (SEAL)
Name: WILLIAM N. HUSS, JR.
Title: President

STATE OF SOUTH CAROLINA

COUNTY OF Pickens

ACKNOWLEDGMENT

Christopher G. OLS Notary Public for SOUTH CAROLINA do hereby certify that W. Russell Hester, Jr. the President of Pointe West, Inc. a South Carolina corporation, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal (where an official seal is required by law) official seal this 6th day of January, 2009.

C. G. OLS (SEAL)

Signature of Notary Public
My Commission Expires 12-19-2012

EXHIBIT A

All that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Oconee, being known and designated as 219.61 acres, more or less, including all easements, as shown on a plat thereof entitled, "Survey for Pointe West, Inc.", dated 5/27/08, revised 8/13/08, revised 9/3/08, revised 1/5/09 and recorded in the Office of the Register of Deeds for Oconee in Plat Book 8295 at Page 23, and having the metes and bounds, courses and distances as upon said plat appear.

Together with all rights under easements recorded in Book 1668, Page 203 and Book 1668, Page 204.

This being a portion of the same property conveyed unto Pointe West, LLC by deed from WP Properties of Clemson, LLC dated 12/17/07 and recorded in Deed Book 1634, page 264 records of Oconee County, South Carolina.

FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS
2008 JAN - 7 P 5 21

FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS

BB&T

Doc ID: 001575170007 Type: RTG
2693 Pa 147-153

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

JAN - 7 2 3:20

MORTGAGE OF REAL ESTATE

THIS MORTGAGE, made this 5th day of January, 2009 by HIGH POINTE, LLC, a South Carolina limited liability company (hereinafter referred to as "Mortgagee"), granted and given to BRANCH BANKING AND TRUST COMPANY (hereinafter referred to as "Mortgagee"), a corporation organized and existing under the laws of the State of North Carolina, whose address is P O Box 1250, Whiteville, NC 28472.

WHEREAS, Pointe West, Inc. ("Pointe West") is indebted to Mortgagee, as evidenced by a certain promissory note dated of even date herewith, executed in favor of Mortgagee in the principal sum of Six Million One Hundred Ninety Thousand Four Hundred Seventy-Five Dollars (\$6,190,475), and any renewals, extensions or modifications thereto, the terms of which are incorporated herein by reference. Mortgagee is indebted to Mortgagee, as evidenced by three (3) certain promissory notes each dated of even date herewith, executed in favor of Mortgagee, in the principal sums of Three Million One Hundred Forty-Five Thousand Dollars (\$3,145,000), Six Million Five Hundred Thousand Dollars (\$6,500,000) and Seven Million Six Hundred Thousand Dollars (\$7,600,000), respectively, and any renewals, extensions or modifications thereto, the terms of which are incorporated herein by reference. Harts Cove Development, LLC ("Harts Cove") and together with the Mortgagee and Pointe West, are individually referred to as a "Borrower" and collectively referred to as the "Borrowers") is indebted to Mortgagee, as evidenced by a certain promissory note dated of even date herewith, executed in favor of Mortgagee in the principal sum of One Million Four Hundred Thousand Dollars (\$1,400,000) and any renewals, extensions or modifications thereto, the terms of which are incorporated herein by reference. Where used herein, the term "Note" or "Notes" shall be deemed to include the notes above described, along with any other notes, additional advance agreements, or other documents now or hereafter evidencing any debt whatsoever incurred by Mortgagee or any Borrower and payable to Mortgagee, including without limitation all business and obligations of the Mortgagee or any Borrower to Mortgagee (or an affiliate of Mortgagee) under any interest rate sweep transactions, interest rate cap and/or floor transactions, interest rate collar transactions, sweep agreements (as defined in U.S.C. § 1-101) or other similar transactions or agreements, including without limitation any ISDA Master Agreement executed by Mortgagee or any Borrower and all schedules and confirmations entered into in connection therewith, hereinafter collectively referred to as a "financing agreement", the terms of which are incorporated herein by reference.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that the Mortgagee, for and in consideration of the aforesaid indebtedness and in order to secure the repayment thereof together with any renewals or extensions or modifications thereof, and also to secure in accordance with § 28-3-50, as amended, of the Code of Laws of South Carolina (1976) or any such successor statute as may apply:

1. All future advances and renewals that may subsequently be made to the Mortgagee or any Borrower evidenced by the Notes and by all renewals and extensions thereof; and
2. All other indebtedness of Mortgagee or any Borrower to Mortgagee, now or hereafter existing, whether direct or indirect, including without limitation any advances made by Mortgagee or pay drawings on any irrevocable standby or commercial letter of credit issued on the account of the Mortgagee or any Borrower pursuant to an application therefor, the maximum amount of all indebtedness outstanding at any one time on account of such loan to exceed \$50,000,000 plus interest thereon, all charges and expenses of collection incurred by Mortgagee including reasonable attorneys' fees, has granted, bargained, sold, assigned, released and does by these presents grant, bargain, sell, release and assign unto the Mortgagee, its successors and assigns the following described property:

See Exhibit A attached hereto and incorporated herein.

Together with all and singular improvements thereon and the rights, members, hereditaments and appurtenances to the same belonging or in any way appertaining; all rights, reserved or otherwise, of Mortgagee (in its capacities as developer or owner of condominium units) in, under or as described in that certain Master Deed on the premises of Clemson Horizontal Property Regime dated as of July 29, 2008 and filed for record in the Oconee County, South Carolina Register of Deeds at Book 1674, Page 124, as may be amended, modified or supplemented from time to time and any and all bylaws and documents established under or related thereto (collectively, including such Master Deed, the "Horizontal Regime") and all the rents, issues, and profits thereof (provided, however that, unless otherwise agreed, the Mortgagee shall be entitled to the rents, issues, and profits until default hereunder); and including all heating, plumbing, and electrical systems and equipment now or hereafter attached to or used in connection with the real estate herein described (herein collectively the "Premises").

TO HAVE AND TO HOLD, all the said Premises to the Mortgagee, its successors and assigns forever.

The Mortgagee covenants that it is lawfully seized of the premises herein above described in fee simple absolute, that Mortgagee has good, right, and lawful authority to sell, lease, convey, or otherwise dispose of the same, and that the premises are free and clear of all liens and encumbrances whatsoever except as listed in the title policy and the insurance policy which Mortgagee has obtained in the transaction in which Mortgagee obtained this Mortgage. The Mortgagee further covenants to warrant and forever defend title to the premises as herein conveyed unto the Mortgagee, from and against all persons whatsoever lawfully claiming the same or any part thereof.

2nd: Olom
13.00 PO Box 1633
Clemson, SC
29633

premises as herein conveyed unto the Mortgagee, from and against all persons whomsoever lawfully claiming the same or any part thereof.

The Mortgagor covenants and agrees as follows:

1. That Mortgagor will, and will cause the other Borrowers to, promptly pay the principal of and interest on the indebtedness evidenced by the said Notes and any subsequent similar agreement evidencing additional advances, at the time and in the manner therein provided. Mortgagor shall timely pay and perform any obligation, covenant or warranty contained not only in this mortgage but also any other mortgage, or writing which gives title to, or which may constitute a lien upon any of the Property. Upon request of Mortgagee, Mortgagor promptly shall furnish satisfactory evidence of such payment or performance. Mortgagor warrants that it will not, without the prior written approval of Mortgagee, release, terminate, cancel, modify or amend any of the Regime Documents in any respect, and any such action by Mortgagor without such approval by Mortgagee will be invalid and without legal operation or effect. Mortgagor shall not enter into, terminate, cancel or amend any material lease or contract affecting the Property or any part thereof without the prior written consent of the Mortgagee.

2. That the lien of this instrument shall remain in full force and effect during any postponement or extension of the time of payment of or any other modification relative to the indebtedness or any part thereof secured hereby (sometimes hereinafter collectively referred to as the "Debt").

3. That Mortgagor will pay as they become due all mortgage loan insurance premiums, taxes, assessments, water rates, and other governmental or municipal charges, fines or impositions, assessed against the property hereby mortgaged. If the Mortgagor fails to make any payments provided for in this section or any other payments for taxes, assessments, or the like, the Mortgagee may pay the same, and all sums so paid shall bear interest as the debt secured by the principal debt secured hereby (from the date of such advance) and shall be secured by this mortgage. Any award for the taking of, or damages to, all or any part of the Property or any interest therein upon the lawful exercise of the power of sale contained herein shall be payable solely to Mortgagee, which may apply the same so received to payment of the Debt.

4. That Mortgagor will keep the Property in as good order and condition as it is now, reasonable wear and tear excepted, and will not commit or permit any waste thereof. Mortgagor may at any reasonable time and from time to time make or cause to be made reasonable entries upon, investigations, and inspections of the Property, including without limitation any inspections or investigations such as sampling and testing which may be necessary or desired to review compliance with Environmental Laws.

5. That Mortgagor will purchase and continuously maintain fire and such other hazard insurance as the Mortgagee may require on the improvements which form a part of the Property, now or hereafter on the Property, and will pay promptly when due any premiums therefor. If Mortgagor fails to do so, the Mortgagee may cause the same to be done and reimburse itself for such premiums and expenses, and the same shall be secured by this mortgage. All insurance shall be effected in companies approved by the Mortgagee and the policies and renewals thereon shall be held by the Mortgagee and have attached thereto loss payable clauses (including New York loss files) in favor of and in favor of the Mortgagee. In event of loss, Mortgagor will give immediate notice by mail to the Mortgagee, who may make proof of loss of damage as required by the Mortgagee, and each insurance company concerned is hereby authorized and directed to make payment of the amount payable thereon jointly to the Mortgagee and Mortgagee jointly, and the insurance proceeds, or any part thereof, may be applied to the payment of the Debt in full or in part either to the reduction of the indebtedness hereby secured or to the restoration of the property damaged.

6. That Mortgagor hereby assigns to the Mortgagee all the rents, issues, and profits of the Property from and after any default hereunder, and should legal proceedings be instituted for enforcement of the same, that the Mortgagee shall have the right to have appointed a receiver of the rents, issues, and profits, who, after paying the charges and expenses attending such proceedings and the execution of his trust as receiver, shall apply the residue of the rents, issues, and profits toward the payment of the debt secured hereby. Mortgagor hereby appoints Mortgagee as Mortgagee's attorney-in-fact to collect any rents and profits, with or without suit, and to apply the same, less expenses of collection to any indebtedness secured hereby. The Moneys in any manner as Mortgagee may desire. All the fixtures and equipment that comprise a part of the Property shall, to the extent permitted by law, be deemed to be affixed to the aforesaid land and conveyed therewith. As to the benefits of the assignment of this mortgage shall be considered to be a security agreement that creates a security interest in such fixtures for the benefit of the Mortgagee. In that regard, Mortgagee shall have all of the rights and remedies of a secured party under the South Carolina Uniform Commercial Code. Mortgagor hereby authorizes Mortgagee to file all UCC Financing Statements and other documents necessary to create, perfect and maintain the security interest created hereby. However, to the extent allowed by law, this Mortgage shall constitute a document sufficient to perfect and maintain any security interest created hereby in the Property and its proceeds.

7. That Mortgagor will pay as they become due the principal and interest on all notes, obligations, contracts or agreements, secured by any mortgage, lien, or security interest having priority over this mortgage as to the Property described herein. If the Mortgagor fails to make any of the payments secured hereby, Mortgagee may pay the same and add any amounts so paid to the principal debt, and all sums so paid shall bear interest as the principal debt secured hereby and shall be secured by this mortgage.

8. Mortgagor for itself, its successors and assigns, its heirs, assigns, warrants and agrees that: (a) neither Mortgagor nor any other person has used or installed any Hazardous Materials (as hereinafter defined) on the Property or received any notice from any governmental agency, entity or other person that such Hazardous Materials are, from or affecting the Property; (b) neither Mortgagor nor any other person has violated any applicable Environmental Laws (as hereinafter defined) relating to or affecting the Property; (c) the Property is presently in compliance with all applicable Environmental Laws; there are no circumstances presently existing upon or under the Property, or relating to a Proposed Action, which may violate any applicable Environmental Laws, and there is not now pending, or threatened, any action, suit, investigation or proceeding against Mortgagor relating to the Property (or against any other party relating to the Property) seeking to enforce any Environmental Law against Mortgagor under any of the Environmental Laws; (d) the Property shall be kept free of Hazardous Materials, and shall not be used for the manufacture, transport, treat, store, handle, dispose, or process of Hazardous Materials; (e) Mortgagor shall not cause the release of Hazardous Materials in the Property nor a release of Hazardous Material onto or from the Property; (f) Mortgagor shall not be responsible for the release of Hazardous Materials on the Property; (g) Mortgagor shall at all times comply with and ensure compliance with all applicable Environmental Laws relating to or affecting the

Property and shall keep the Property free and clear of any liens imposed pursuant to any applicable Environmental Laws; (g) the Mortgagor has obtained and will at all times continue to obtain and/or maintain all licenses, permits and/or other governmental or regulatory actions necessary to comply with Environmental Laws (the "Permits") and the Mortgagor is in full compliance with the terms and provisions of the Permits and will continue to comply with the terms and provisions of the Permits; (h) Mortgagor shall immediately give the Mortgagee oral and written notice in the event that Mortgagor receives any notice from any governmental agency, entity, or any other party with regard to Hazardous Materials on, from or affecting the Property and shall conduct and complete all investigations, sampling, and testing, and all removal, removal, and other actions necessary to clean up and remove all Hazardous Materials on, from or affecting the Property in accordance with all applicable Environmental Laws. The Mortgagee hereby agrees to indemnify the Mortgagee and hold the Mortgagee harmless from and against any and all losses, liabilities, damages, injuries (including, without limitation, attorneys' fees) and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against Mortgagee for, with respect to, or as a direct or indirect result of (a) the presence, on, or under, or the escape, spillage, emission or release from the Property of any Hazardous Materials regardless of whether or not caused by or within the control of Mortgagee, (b) the violation of any Environmental Laws relating to or affecting the Property, whether or not caused by or within the control of Mortgagee, (c) the failure by Mortgagee to comply fully with the terms and provisions of this paragraph, or (d) any warranty or representation made by Mortgagee in this paragraph, any false or untrue in any material respect. For purposes of this Mortgage, "Hazardous Materials" means and includes, but is not limited to, any flammable explosives, radioactive materials, asbestos or any material containing asbestos, and/or any toxic or otherwise hazardous waste, substance or material defined as such in (or for the purposes of) the Environmental Laws. For purposes of this Mortgage, "Environmental Laws" means the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, any "Super Fund" or "Super Site" or any other federal, state, or local law, regulation, or decree regulating, relating to, or imposing liability or standards of care concerning any petroleum products, any flammable explosives, radioactive materials, asbestos or any material containing asbestos, and/or any hazardous, toxic or dangerous waste, substance or material, as may now or at any time hereafter be in effect. The rights, claims and liabilities of Mortgagee under this paragraph shall survive the foreclosure of the Mortgage, the delivery of a deed in lieu of foreclosure, the cancellation or release of record of this Mortgage or the payment and cancellation of the Note, or otherwise lawfully permitted in writing by the Mortgagee, the sale or alienation of any part of the Property.

9. That in the event that Mortgagee or any other Borrower shall default in its obligations under this Mortgage, the Notes or other Loan Documents, and Mortgagee may use any and all means to assist in the collection of the Debt or to enforce compliance of Mortgagee with any of the provisions of this Mortgage, the Notes or other Loan Documents or in the event Mortgagee shall become parties to any suit or legal proceeding (including any bankruptcy proceeding conducted before any United States Bankruptcy Court) concerning the Property, concerning the lien of this Mortgage, or concerning the collection of the Debt or concerning compliance by Mortgagee or other borrower named herein with any of the provisions of this Mortgage, the Notes or other Loan Documents, Mortgagee shall pay Mortgagee's reasonable attorneys' fees and costs incurred in such suit or proceeding, and such fees and costs shall be secured by this Mortgage and its payment in full shall constitute satisfaction of the Debt. Mortgagee shall be liable for such attorneys' fees and costs whether or not any suit or proceeding is commenced.

10. That to the extent permitted by law, Mortgagee may at any time and from time to time of all or any portion of the Property (whether or not such release is in a document among the parties) agreeable to Mortgagee without notice to or the consent, approval or agreement of other parties to this Mortgage, including junior lienors and purchasers subject to the lien of this Mortgage, and such releases shall not impair the priority, lien or priority of this Mortgage on that portion of the Property remaining subject to this Mortgage, nor shall Mortgagee be relieved of its personal liability for the Debt. Notwithstanding the existence of any other security interests in the Property held by Mortgagee or by any other party, Mortgagee shall have the right to determine the order in which any or all of the Property shall be sold or otherwise liquidated available to Mortgagee, and Mortgagee shall further have the right to determine the order in which proceeds from such sale or liquidation shall be distributed. Notwithstanding the exercise of any remedy it has, Mortgagee, or any party who has actual or constructive notice hereof, hereby waives any and all rights to require strict compliance with the exercise of any of the remedies permitted by applicable law or provided herein.

11. That Mortgagee shall be held liable for the occurrence of any of the following:

(a) Default in the payment or performance of the obligations, or of any covenant or warranty, in this mortgage, in the Note or other document executed by or on behalf of or on behalf of or on behalf of Mortgagee or any other Borrower to Mortgagee or any contract between Mortgagee or any other Borrower and Mortgagee, or in any contract between any third party and Mortgagee made for the benefit of Mortgagee; or

(b) Any warranty, representation or agreement made or furnished to Mortgagee by or on behalf of Mortgagee or any Borrower in connection with this transaction proving to be untrue in any material respect when made or furnished; or

(c) Loss, theft, substantial destruction, damage to, or destruction of the Property, or the assertion or making of any levy, seizure, mechanic's or materialman's lien or attachment against the Property; or

(d) Death, dissolution, termination, insolvency, bankruptcy, business failure, appointment of a Receiver for any part of the property of, assignment for the benefit of creditors, or a voluntary or involuntary bankruptcy petition by or against, or the inability to pay debts in the ordinary course of business of a Mortgagee or any other party who is a maker, endorser, guarantor or surety for Mortgagee or any Borrower; or

(e) Failure of a corporate Mortgagee or any other party who is a maker, endorser, guarantor or surety for Mortgagee to maintain its corporate existence in good standing; or

(f) Upon the entry of any monetary judgment against Mortgagee or the filing of any tax lien against Mortgagee or any Borrower, or upon the issuance of any writ of garnishment against any property, debts due or rights of Mortgagee or any Borrower or

(g) The sale (including sale by foreclosure or otherwise) or any other disposition, transfer or encumbrance of all or any part of the Property or any interest therein, or any change in the ownership or control of any corporate or partnership Mortgagee, or any Borrower, without Mortgagee's prior written consent.

(h) If Mortgagee should otherwise deem itself its security interest, the Property or the indebtedness evidenced by the Notes unsafe or insecure; or should Mortgagee otherwise believe that the prospect of payment or other performance is impaired.

12. That the Mortgagee shall hold and enjoy the premises above conveyed until there is a default under this mortgage or in the Notes secured hereby. If there is a default in any of the terms, conditions or covenants of this mortgage or of any of the Notes secured hereby, then at the option of the Mortgagee, and without prior notice to the Mortgagor, all sums then owing by the Mortgagor, or any Borrower or any other obligor on the Notes to the Mortgagee shall become immediately due and payable, the Mortgagee may in addition pursue all other rights and remedies available against the Mortgagor, any Borrower or any other obligor under the Notes under applicable provisions of South Carolina Law and/or any other law governing the Notes. This mortgage shall remain in security for full payment of all indebtedness evidenced by the Notes and for performance of any obligation evidenced by the Notes or any document executed in connection therewith, notwithstanding the sale or release of any or all of the Property, the assumption by another party of Mortgagor's obligations under the Notes or this mortgage, the forbearance or extension of time or payment of the indebtedness evidenced by the Notes or any one of same or the release of any party who has assumed or incurred any obligation for the repayment of any indebtedness evidenced by the Notes and secured by this mortgage. None of the foregoing shall in any way affect the full force and effect of the lien of this mortgage or impair the Mortgagee's right to any other remedy against the Mortgagor, Borrower or any other obligor under the Notes. Any forbearance by the Mortgagee in exercising any right or remedy hereunder or otherwise afforded by applicable law, shall not be taken as a precedent or a bar to the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other fees or charges by Mortgagee shall not be a waiver of Mortgagee's right to accelerate maturity of the indebtedness evidenced by the Notes upon default. It shall be the essence the payment or performance of any of the obligations, or of any covenant or warranty contained in this mortgage or in any of the Notes or any other document related thereto.

13. That upon default hereunder, along with any remedies set out herein and in the above referenced Notes, the Mortgagee may foreclose upon the mortgaged premises and obtain a deficiency judgment pursuant to §29-3-660 of the South Carolina Code of Laws (1976). Mortgagor hereby expressly waives any appeal rights which Mortgagee may have under §29-3-680 or seq., South Carolina Code of Laws (1976), in such suit and understands and agrees that a deficiency judgment, if pursued by Mortgagee, shall be determined by the highest possible judicial sale of the Property. In the event that Mortgagee voluntarily or otherwise shall become parties to any suit or litigation involving the Property, it shall be saved harmless and shall be reimbursed by Mortgagor for any amount paid, including costs, charges and attorney's fees incurred in any such suit or proceeding, and the same shall be secured by this Mortgage and shall be a first lien.

14. That the covenants herein covenanted shall bind, and the benefits and advantages shall inure to, the respective heirs, executors, administrators, successors, and assigns of the parties hereto. Whenever used, the singular number shall be applicable to all genders and the term "Mortgagor" shall include any party of the indebtedness hereby secured or any transferee thereof whether by operation of law or otherwise. The number of the parties to this mortgage shall, if more than one, be joint and several. The designations "corporate", "noncorporate", and "partnership" shall include all types of companies and limited liability partnerships.

15. **WAIVER OF TRIAL BY JURY** WHEREAS EXPRESSLY PROHIBITED BY APPLICABLE LAW, THE UNDERSIGNED HEREBY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY MATTERS OR CLAIMS ARISING OUT OF THIS MORTGAGE OR ANY DEBT INCURRED OR EXECUTED IN CONNECTION HEREWITH OR OUT OF THE CONDUCT OF THE RELATIONSHIP BETWEEN THE UNDERSIGNED AND MORTGAGEE. THIS PROVISION IS A MATERIAL INDUCEMENT FOR MORTGAGEE TO MAKE THE LOAN SECURED BY THIS MORTGAGE. FURTHER, THE UNDERSIGNED HEREBY CERTIFY THAT NO REPRESENTATIVE OR AGENT OF MORTGAGEE, NOR MORTGAGEE'S COUNSEL, HAS REPRESENTED OR OTHERWISE, THAT MORTGAGEE WOULD NOT SEEK TO ENFORCE THIS WAIVER OF TRIAL BY JURY TRIAL PROVISION IN THE EVENT OF LITIGATION. NO REPRESENTATIVE OR AGENT EMPLOYED BY OR FOR MORTGAGEE'S COUNSEL, HAS THE AUTHORITY TO WAIVE, CONDITION OR MODIFY THIS PROVISION.

Waiver of Appraisal Rights. The Laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as appraised by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the foreclosure. **TO THE FULLEST EXTENT PERMITTED BY LAW AND AS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN, MORTGAGOR HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.**

IN WITNESS WHEREOF, each Mortgagor has executed this Mortgage the day and year first above written.


Signed, sealed and delivered in the presence of:

Signed, sealed and delivered in the presence of:



(SEAL)


(SEAL)

MORTGAGOR:
BRIAN P. WINKAPP



(SEAL)
Name: BRIAN P. WINKAPP
Title: AGENT

STATE OF SOUTH CAROLINA)
)
COUNTY OF PREMONT)

ACKNOWLEDGMENT

I, Christopher Lawson, a notary public for SOUTH CAROLINA, do hereby certify that THOMAS P. WILKINS the Manager of High Pointe, LLC, a South Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal (where an official seal is required by law) official seal this 6th day of January, 2009.

 (SEAL)

Signature of Notary Public
My Commission Expires 12.19.2017

EXHIBIT A

All that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Oconee, being known and designated as Tract A, containing 58.726 acres, more or less and Tract B, containing 14.022 acres, more or less, as shown on a plat thereof entitled, "Survey for High Points, LLC", dated 3/13/08, revised 3/25/08, revised 7/29/08, revised 12/26/08, revised 1/5/09 and recorded in the Office of the Register of Deeds for Oconee in Plat Book 8295 at Page 485 said plat having the metes and bounds, courses and distances as upon said plat appear, and any condominium units to be constructed thereon.

AND ALSO

All those certain pieces, parcels or Condominium Unit(s) lying and being situate in the State of South Carolina, County of Oconee being known and designated as Units 1011, 1012, 1013, 1014, 1021, 1022, 1023, 1024, 1031, 1111, 1112, 1113, 1114, 1121, 1122, 1123, 1124, 1133, 1134, 1211, 1212, 1213, 1214, 1221, 1222, 1223, 1224, 1231, 1232, 1233, 1234, 1311, 1312, 1323, 1411, 1412, 1422, 1434, 1511, 1512, 1513, 1521, 1522, 1524, 1611, 1612, 1621, 1713, 1714, 1723, 1724, 1811, 1821 and 1834, of the High Points of Clemson Horizontal Property Regime, being more particularly described by reference to the "Master Deed of HighPoints of Clemson Horizontal Property Regime" establishing the aforementioned REGIME, dated July 29, 2008, and recorded in the Office of the Register of Deeds for Oconee County, South Carolina in Deed Book 1674 at Page 124 and as may be amended from time to time.

ALSO, all the rights, privileges and common elements appertaining to the above described Units, as set forth in the above-described Master Deed and By-Laws of High Points of Clemson, a Horizontal Property Regime.

This being a portion of the same property conveyed unto High Points, LLC by deed from Pointe View, Inc. dated 11/27/07 and recorded in Deed Book 1634, page 269 records of Oconee County, South Carolina.

FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS
JAN - 9 3 20

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

2001 JAN -7 P 3:18BB&T

Doc ID: 001974610007 1/06: HTG
#2693 PG 111-117

MORTGAGE OF REAL ESTATE

THIS MORTGAGE, made this 5th day of January, 2009, by JACOB UTILITIES, LLC, a South Carolina limited liability company (hereinafter referred to as "Mortgagor"), granted and given to BRANCH BANKING AND TRUST COMPANY (hereinafter referred to as "Mortgagee"), a corporation organized and existing under the laws of the State of North Carolina, whose address is P O Box 1290, Whiteville, NC 28472.

WHEREAS, Pointe West, Inc. ("Pointe West") is indebted to Mortgagee, as evidenced by a certain promissory note dated of even date herewith, executed in favor of Mortgagee in the principal sum of Six Million One Hundred Ninety Thousand Three Hundred Seventy-Five Dollars (\$6,190,475), and any renewals, extensions or modifications thereto, the terms of which are incorporated herein by reference. High Pointe, LLC ("High Pointe") is indebted to Mortgagee, as evidenced by three (3) certain promissory notes each dated of even date herewith, executed in favor of Mortgagee, in the principal sum of Three Million One Hundred Forty-Five Thousand Dollars (\$3,145,000), Six Million Five Hundred Thousand Dollars (\$6,500,000) and Seven Million Six Hundred Thousand Dollars (\$7,600,000), respectively, and any renewals, extensions or modifications thereto, the terms of which are incorporated herein by reference. Harts Cove Development, LLC ("Harts Cove" and together with Pointe West and High Pointe, are individually referred to as "Borrowers" and collectively referred to as the "Borrowers") is indebted to Mortgagee, as evidenced by a certain promissory note dated of even date herewith, executed in favor of Mortgagee in the principal sum of One Million Four Hundred Thousand Dollars (\$1,400,000) and any renewals, extensions or modifications thereto, the terms of which are incorporated herein by reference. Where used herein, the term "Note" or "Notes" shall be deemed to include the notes above described, along with any other notes, additional advance agreements, or other documents now or hereafter existing any debt whatsoever incurred by any Borrower and payable to Mortgagee, including without limitation all indebtedness and obligations of any Borrower to Mortgagee (or an affiliate of Mortgagee) and any interest rate swap transactions, interest rate cap and/or floor transactions, interest rate collar transactions, swap agreements (as defined in U.S.C. § 101) or other similar transactions or agreements, including without limitation any Swap Agreement executed by any Borrower and all schedules and confirmations associated with such derivatives contracts, hereinafter collectively referred to as a "Hedge Agreement", the terms of which are incorporated herein by reference. Mortgagee is not a Borrower and is not indebted to Mortgagee under any Note.

Hyatt, Watson
PO Box 1633
Clemmons, SC
29633
13.00

008151

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that the Mortgagor, for and in consideration of the abovesaid indebtedness and in order to secure the payment thereof together with any renewals or extensions or modifications thereof, has granted, conveyed in accordance with § 29-3-50, as amended, of the Code of Laws of South Carolina (2007) of any other laws, statutes or may apply:

1. All future advances and additions hereto may subsequently be made to any Borrower evidenced by the Notes and by all renewals, extensions, modifications and
2. All other notes, now or hereafter existing, whether direct or indirect, including without limitation any promissory notes or commercial letters of credit, issued or to be issued by any Borrower pursuant to an application therefor, the maximum amount of all funds to be advanced or to be advanced at any one time secured hereby not to exceed \$50,000,000 plus interest thereon, all charges and expenses of the Mortgagee incurred by Mortgagee including court costs and reasonable attorney's fees, has granted, conveyed, assigned, transferred and does by these presents grant, bargain, sell, assign and release unto the Mortgagee, its successors and assigns the following described property

See Exhibit A attached hereto and incorporated herein.

Together with all and singular improvements thereon and the rights, members, hereditaments and appurtenances to the same belonging or in anywise appertaining to the same, together with the rents thereof (provided, however that, unless otherwise agreed, the Mortgagee shall be entitled to receive the rents thereof until default hereunder); and including all heating, plumbing, and utility connections and fixtures now or hereafter attached to or used in connection with the real estate herein above described, and all fixtures.

TO HAVE AND TO HOLD, all and singular the premises above mentioned to Mortgagee, its successors and assigns forever. The Mortgagee hereunto bound, its successors and assigns, shall defend all and singular the said premises to Mortgagee, its successors and assigns, its heirs, heirs and assigns.

The Mortgagee covenants and warrants that it has full power and authority to sell, convey, or encumber the same, and that the

MORTGAGE, NOR MORTGAGOR'S COUNSEL, HAS THE AUTHORITY TO WAIVE, CONDITION OR MODIFY THIS PROVISION.

Waiver of Appraisal Rights. The Laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. TO THE FULLEST EXTENT PERMITTED BY LAW AND AS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN, MORTGAGOR HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.


IN WITNESS WHEREOF, each Mortgagor has executed this Mortgage the day and year first above written.

Signed, sealed and delivered in the presence of:

Signed, sealed and delivered in the presence of:

MORTGAGOR:

LACARB UTILITIES, LLC


By: Stephen R. Goldie (SEAL)
Title: Member


[Name] (SEAL)

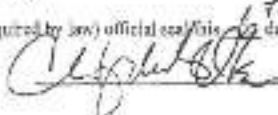
[Name] (SEAL)

STATE OF SOUTH CAROLINA)
COUNTY OF Rowan)

ACKNOWLEDGMENT

I, Christopher L. Orr, a notary public for South Carolina, do hereby certify that Stephen Z. Gault Member of Jacob's Lullabies, LLC, a South Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal (where an official seal is required by law) official seal this 16th day of January, 2005.

 (SEAL)

Signature of Notary Public
My Commission Expires: 12-19-2012

EXHIBIT A

All that certain piece, parcel or tract of land lying and being situate in the State of South Carolina, County of Oconee, being known and designated as 7.561 acres, more or less, Seneca Township, Oconee County, South Carolina, and being more fully described on a plat entitled "Boundary Survey for Jacobb Utilities" prepared by Stephen R. Edwards, PLS# 19881 dated October 11, 2007, and revised October 18, 2007, recorded in the RMC Office for Oconee County, South Carolina in Plat Book B241, page 4, and having the notes and bounds, courses and distances as upon said plat appear. Also shown AS 7.56 "Outsale" parcel on plat thereof entitled, "Survey for Pointe West, Inc.", dated 5/27/08, revised 8/13/08, revised 9/3/08, revised 1/5/09, and recorded in the Office of the Register of Deeds for Oconee in Plat Book ~~B245~~ at Page ~~2-3~~, and having the notes and bounds, courses and distances as upon said plat appear.

Together with a non-exclusive easement and right of way 20' wide for ingress and egress, pursuant to instrument filed in Book 1634 at Page 267, together with rights pursuant to instrument filed in Book 10-F, Page 27.

This being the same property conveyed unto Jacobb Utilities, LLC by deed from Pointe West, Inc. dated 12/18/07 and recorded in Deed Book 1634, page 267, records of Oconee County, South Carolina.

FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS
2008 JAN - 1 10 10

FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS

Prepared by and return to:
Ayan M. Lipsitz, Esquire
Nixson Pruet, LLC
1230 Main Street, Suite 700
Columbia, South Carolina 29201

2009 JAN -1 P 3 201



Doc ID: 001576580005 Type: RT3

BR 2693 PG 154-158

ASSIGNMENT OF LEASES AND RENTS

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

11-00
08158
PO Box 1633
Clemson, SC
29633

THIS ASSIGNMENT OF LEASES AND RENTS ("Assignment") is made this 8th day of January, 2009, by and from HIGH POINTE, LLC, a South Carolina corporation ("Assignor"), to and for BRANCH BANKING AND TRUST COMPANY, a North Carolina banking limited liability company, having a branch office in Anderson, South Carolina ("Assignee").

Assignor is the sole owner of that certain real property located in the City of Clemson, County of Oconee, State of South Carolina described in Exhibit "A" attached hereto and by this reference incorporated herein (the "Property") subject to that certain Mortgage dated as of even date herewith, conveyed by Assignor to Assignee and recorded concurrently herewith in the Office of the Register of Masses Conveyances in Oconee, County, South Carolina (the "Mortgage", as the same may be modified, or supplemented from time to time).

For good and valuable consideration, Assignor hereby absolutely assigns and transfers to Assignee: (a) the income, rents (including, if applicable, all net proceeds from rentals), receivables, security or similar deposits, revenues, issues, royalties, profits, earnings, products and proceeds from any and all of the Property (collectively, the "rents, issues and profits") together with the right, power and authority to collect the same; (b) all leases, written or oral, now in existence or hereafter arising, all other agreements for the use and occupancy of all or any portion of the Property, and any and all extensions or renewals of any thereof, together with the right, power and authority of Assignor to alter, modify or change the terms thereof, or surrender, cancel or terminate the same; and (c) any and all guarantees of any obligations of any lessee (the "lessee") under each of the leases. Assignor irrevocably appoints Assignee its true and lawful attorney-in-fact, at any time and from time to time, at the option of Assignee, to demand, receive and enforce payment of rent, to give receipts, releases and satisfactions, and to sue, in the name of Assignor or Assignee, for all the rents, issues and profits and to apply the same to the indebtedness secured; provided, however, that Assignor shall have the right and authority to collect the rents, issues and profits prior to or at any time there is a default hereunder under any of the loan documents (as defined herein) or any of the other loan documents evidencing and securing the debt evidenced by the assignment of the rents, issues and profits in this Assignment is an absolute assignment from Assignor to Assignee and not merely the passing of a security interest.

This Assignment is made for the purpose of securing:

A. Payment of the principal sum of principal and indebtedness evidenced by those certain promissory notes each dated of even date herewith and payable to Assignee (including any amendments, extensions, renewals, or substitutions thereof, collectively the "Notes"), in the principal sum of: (i) Six Million One Hundred Ninety Thousand Four Hundred Seventy Two Dollars (\$6,194,702) made by Points West, Inc. ("Points West"); (ii) Three Million One Hundred Forty Five Thousand Dollars (\$3,145,000) made by Assignor; (iii) Six Million Five Hundred Thousand Dollars (\$6,500,000) made by Assignor; (iv) Seven Million Six Hundred Thousand Dollars (\$7,600,000) made by Assignor; and (v) One Million Four Hundred Thousand Dollars (\$1,400,000) made by Harts Cove Development, LLC ("Harts Cove"), and together with Assignor and its successors, the "Borrowers";

B. All indebtedness and obligations of Assignor or any Borrower to Assignee (or an affiliate of Assignee) under any interest rate swap transactions, swap order book transactions, interest rate collar transactions, swap agreements (as defined in ISDA ISDA 1992) or other similar transactions or agreements, including without limitation any ISDA Agreement entered into by Assignor or any Borrower and all Schedules and Confirmations entered into in connection therewith, hereinafter collectively referred to as a "Hedge Agreement", the terms of which are incorporated herein by reference;

C. The payment, performance and discharge of each and every obligation, covenant and agreement of Assignor or any Borrower with respect to any loan documents, or to any other obligation of Assignor or any Borrower to Bank, including without limitation the obligation to pay any debt or drawing on any Standby or Commercial Letter of Credit issued by Assignee or the Bank, or any other obligation of Assignor or any Borrower pursuant to any Application and Agreement therefor ("Application"), and all costs of reasonable and necessary attorney's fees as provided in the Note, any Hedge Agreement, Application or other loan documents.

The indebtedness and obligations described in A, B, and C above are hereinafter collectively referred to herein as the "Indebtedness".

ASSIGNOR WARRANTS to Assignor to be the sole owner of its entire interest, as Lessor, in the Leases; that the Leases and their terms, conditions and have not been altered, modified or amended in any manner whatsoever except as permitted herein; that no lessee named therein is in default under any of the terms, covenants or conditions thereof; that no rent reserved in any Lease has been assigned or anticipated, that no rent for any period subsequent to the date of this Assignment has been collected more than one month in advance of the

time when the same become due under the terms of any Lease; that it has full right and title to assign the Leases and all rents, issues and profits thereunder; and no other assignment of any interest therein has been made.

ASSIGNOR COVENANTS AND AGREES with Assignee to observe and perform all obligations imposed under the Leases; to give prompt notice to Assignee of any notice of default under any Leases received or given by Assignor together with a complete copy of any such notice; at the sole cost and expense of Assignor, to enforce, short or terminate any Lease, the performance or observance of each and every covenant and condition thereof by all parties thereto; and not to do or permit to be done anything to impair the security thereof; not to pay or collect any of the rent, issues and profits arising or accruing under the Leases or from the Property in advance of the time when the same shall become due; not to execute any other assignment of interest in the Leases or assignment of rents arising or accruing from the Leases or from the Property; not to subordinate any Lease to any other encumbrance or permit, consent or agree to such subordination without Assignee's prior written consent; not to alter, modify or change the terms of any Lease or give any consent or exercise any action required or permitted by such terms without the prior written consent of Assignee or cancel or terminate any Lease or accept a surrender thereof or convey or transfer or suffer or permit a conveyance or transfer of the leased premises thereby or of any interest therein so as to effect, directly or indirectly, a merger of the estates and rights of, or a termination or discharge of the obligations of, any party thereunder; not to alter, modify or change the terms of any guaranty, deed of trust, mortgage or other such guaranty without the prior written consent of Assignee; not to consent to any assignment of or subletting under any Lease, whether or not in accordance with its terms, without the prior written consent of Assignee; and Assignor shall, at Assignee's request to assign and transfer to Assignee any and all subsequent leases upon all or any part of the Property and to execute and deliver at the request of Assignee all such further assurances and assignments as may be required by Assignor at all times from time to time requires.

THIS ASSIGNMENT is made under the following additional terms, covenants and conditions:

1. At any time and from time to time Assignor shall have the right and obligation to collect and receive at the time of but not prior to, the date provided for the payment thereof, all rents, issues and profits arising under the Leases. Upon the occurrence of an event of default thereunder, or if the Loan Documents or as otherwise expressly provided in any of the Loan Document, Assignor may, at its sole cost and expense and without regard to the adequacy of the security for the Indebtedness, either in person or by agent, without need bringing any action or proceeding, or by a receiver appointed by a court, take possession of the Property as defined by any Lease or in the Mortgage and have, hold, manage, lease and operate the same on such Lease and for so long and as long as Assignee may deem proper and either with or without taking possession of such Property, collect, receive and pay for or otherwise collect and receive all rents, issues and profits of the Property as provided for in the Leases and unpaid with full power to make from time to time all alterations, renovations, repairs and replacements in and upon the Property as may seem proper to Assignee, and to apply any such collected rents, issues and profits to the payment of the expenses of managing the Property, including, without being limited thereby, the salaries of the managing agent and such other employees as Assignee may deem necessary or desirable, and the cost of all alterations, renovations, repairs and replacements, including, without being limited thereby, all taxes, charges, claims, expenses of water, sewer, rent and any other liens, and premiums for all insurance which Assignee may deem necessary or desirable, the costs of all alterations, renovations, repairs and replacements, and all expenses incurred in and upon the Property, and with the possession of the Property; and (b) the Indebtedness together with all costs and expenses incurred in and upon the Property as to any of the items mentioned in this paragraph, as Assignee in its sole discretion shall determine, except as the custom or use to the contrary notwithstanding. The exercise by Assignee of the powers herein provided shall not constitute a waiver of the collection of the rents, issues and profits and the application thereof as herein provided, and in the event of any default by Assignor under this Assignment, the Note, any Hedge Facility, or the Mortgage, or any Lease.

2. Assignee shall not be liable for any claim, demand or liability of Assignor resulting from any act or omission of Assignee or from managing the Property, or for any claim, demand or liability resulting from the willful misconduct or gross negligence of Assignee. Assignee shall not be obligated to indemnify Assignor for any claim, demand or liability which Assignee hereby undertake to perform or discharge, any obligation, duty or liability undertaken by Assignee hereunder in connection with this Assignment, and Assignor shall, and does hereby agree, to indemnify Assignor for, and to hold Assignor harmless from, any and all liability, loss or damage which may or might be incurred by Assignor in connection with the performance of its obligations under this Assignment, and from any and all claims and demands whatsoever which may be asserted against Assignor by reason of any alleged obligations or undertakings on its part to perform or discharge any of its obligations or undertakings contained in any Lease. Should Assignee incur any such liability under any Lease or otherwise in connection with this Assignment or in defense of any such claims or demands, the amount thereof, including reasonable attorneys' fees and costs, shall be secured hereby and Assignor shall reimburse Assignee therefor from time to time as requested by Assignee. In the event of the failure of Assignor to do so, Assignee may, at its option, declare the loan payable thereunder to be due and payable immediately. This Assignment shall not operate to place responsibility for the control, care, maintenance, repair or replacement of the Property or any portion thereof upon Assignee, nor for the carrying out of any of the terms and conditions of any Lease, or for the failure to make Assignee responsible or liable for any waste committed on the Property or on any portion thereof, or for the failure to maintain the Property or any portion thereof in a safe and sound condition or for any negligence of Assignor or any employee or agent of Assignor in the repair or control of the Property or any portion thereof resulting in loss or damage to the Property or any portion thereof.

3. Assignee shall have full right, title and interest in the Leases to any subsequent holder of the Mortgage and to assign the same to any person acquiring title to the Property through such holder. Assignor shall have been barred and foreclosed of all right, title and interest and equity of redemption in the Leases and the Property and Assignor's interest in the Leases shall be liable to account to Assignor for the rents, issues and profits thereunder.

4. Upon payment and performance in full of the indebtedness, this Assignment shall become and be void and of no effect, but the affidavit, certificate, report or statement of any officer, agent or attorney of Assignee showing any part of the indebtedness to remain unpaid or unperformed shall be and constitute conclusive evidence of the validity, effectiveness, and continuing force of this Assignment and any person may, and is hereby authorized to, rely thereon. Assignor, as the lessor under any Lease, hereby releases and directs the lessee named in any such Lease or any other or future lessee or occupants of the Property described therein upon receipt from Assignee of written notice that Assignee is then the holder of the Note to pay any to Assignee all rents, issues, and profits arising or accruing under such Leases or from the Property and to continue so to do until otherwise notified by Assignee.

5. Assignee may take or release other security for the payment of the indebtedness may release any party primarily or secondarily liable therefor and may apply any other security held by it to the satisfaction of the indebtedness without prejudice to any of its rights under this Assignment.

6. Nothing contained in this Assignment and no act done or omitted by Assignee pursuant to the powers and rights granted it hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under the Loan Documents and this Assignment is made and not intended to be prejudicial to any of the rights and remedies possessed by Assignee under the terms of the Loan Documents. Assignee is authorized to collect the indebtedness and to enforce any other security therefor and to take any action therefor prior to, simultaneously with, or subsequent to any action taken by a beneficiary.

7. Assignor hereby assigns to Assignee all or part of an award payable by reason of condemnation action under the right of eminent domain to which the Property is subject to be paid directly to Assignee.

8. Any guaranty of payment and performance on any Lease shall not be released, modified, or limited in any manner without the prior written consent of Assignee.



9. This Assignment is made, made to be made, and shall be governed by the laws of the State of South Carolina and shall be interpreted in such a manner as to be effective and valid under the applicable law, but no provision hereof shall be prohibited by or invalid under the applicable law, such provision shall nevertheless be enforceable and valid in all other respects and the invalidity of any such provision or the remainder hereof shall not affect the validity of the remainder hereof.


10. In case of a conflict between the provisions of this Assignment and the terms of the Mortgage, the terms of this Assignment shall control.

11. **WAIVER OF TRIAL BY JURY.** WHEREAS, IT IS EXPRESSLY PROHIBITED BY APPLICABLE LAW, THE UNDERSIGNED HEREBY WAIVES THE RIGHT TO TRIAL BY JURY OF ANY MATTERS OR CLAIMS ARISING OUT OF THIS ASSIGNMENT, REGARDLESS OF THE NATURE OF ANY SUCH MATTERS OR CLAIMS IN CONNECTION HERewith OR OUT OF THE CONDUCT OF THE RELATIONSHIP BETWEEN THE UNDERSIGNED AND ASSIGNEE. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE EXECUTION OF THIS LOAN SECURED BY THIS ASSIGNMENT. FURTHER, THE UNDERSIGNED HEREBY CERTIFIES THAT HIS REPRESENTATIVE OR AGENT OF ASSIGNEE, NOR ASSIGNEE'S COUNSEL, HAS STIPULATED OR AGREED, EXPRESSLY OR OTHERWISE, THAT ASSIGNEE WOULD NOT SEEK TO ENFORCE THIS WAIVER OF TRIAL BY JURY PROVISION IN THE EVENT OF LITIGATION. NO REPRESENTATIVE OR AGENT OF ASSIGNEE, NOR ASSIGNEE'S COUNSEL, HAS THE AUTHORITY TO WAIVE, CONDITION OR MODIFY THIS WAIVER OF TRIAL BY JURY.

THIS ASSIGNMENT, together with the powers, rights and remedies herein contained, shall inure to the benefit of Assignee and any successors, assigns and any other persons to whom the same may be assigned and shall be binding upon Assignor, its successors and assigns and any successors and assigns of the Property.

IN WITNESS WHEREOF, Assignor has hereunto set his hand and seal, or caused this Assignment to be executed by its duly authorized officer, agent or attorney-in-fact, a duly authorized signing member(s), this the day first above shown.

Witness: 





STATE OF SOUTH CAROLINA)
COUNTY OF PERDUE)

ACKNOWLEDGMENT

I, FRANCIS CHRISTOPHER O'NEAL, a notary public in SOUTH CAROLINA, do hereby certify that THOMAS R. DARR, the Manager of High Palma, LLC, a South Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal (where an official seal is required by law) official seal this 6th day of January, 2009.

 (SEAL)
Signature of Notary Public
My Commission Expires 12, 19, 2012

EXHIBIT A

(Here set forth the entire legal description of the Property covered by the Mortgage granted by Assignor to Assignee.)

All that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Oconee, being known and designated as Tract A, containing 58.725 acres, more or less and Tract B, containing 14.022 acres, more or less, as shown on a plat thereof entitled, "Survey for High Pointe, LLC", dated 3/13/08, revised 3/25/08, revised 7/29/08, revised 12/26/08, revised 1/5/09 and recorded in the Office of the Register of Deeds for Oconee in Plat Book 8295, at Page 4-5 said plat having the metes and bounds, courses and distances as upon said plat appear, and any condominium units to be constructed thereon.

AND ALSO

All those certain pieces, parcels or Condominium Unit(s) lying and being situate in the State of South Carolina, County of Oconee, being known and designated as Units 1011, 1012, 1015, 1019, 1021, 1022, 1023, 1024, 1031, 1111, 1112, 1113, 1114, 1121, 1122, 1125, 1126, 1133, 1134, 1211, 1212, 1213, 1214, 1221, 1222, 1223, 1234, 1231, 1232, 1233, 1234, 1311, 1312, 1323, 1411, 1412, 1422, 1434, 1511, 1512, 1513, 1521, 1522, 1523, 1531, 1611, 1612, 1631, 1713, 1714, 1723, 1724, 1811, 1821 and 1834, of the High Pointe of Clemson Horizontal Property Regime, being more particularly described by reference to the "Master Deed of HighPointe of Clemson Horizontal Property Regime" establishing the aforementioned REGIME, dated July 29, 2008, and recorded in the Office of the Register of Deeds for Oconee County, South Carolina in Deed Book 1674 at Page 124 and as may be amended from time to time.

ALSO, all the rights, privileges and common elements appertaining to the above described Units, as set forth in the aforementioned Master Deed and By-Laws of High Pointe of Clemson, as amended from time to time.

This being a portion of the same property conveyed unto High Pointe, LLC by deed from Paul and Mary, as dated and recorded in Deed Book 1634, page 269 records of the Office of the Register of Deeds for Oconee County, South Carolina.

FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS
2009 JAN -1 P 3 201

FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS

2001 JAN -7 P 3 19

Prepared by and return to:
Alan M. Lipitz, Esquire
Nexsen Pruet, LLC
1230 Main Street, Suite 703
Columbia, South Carolina 29201

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

DUH155
Clemson
2/26/09
29633



Doc ID: 001875550005 Type: DTG
No. 2693 pg 136-140

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS ("Assignment") is made this 6th day of January, 2009, by and from HARTS COVE DEVELOPMENT, L.P., a South Carolina limited liability company ("Assignor"), to and for BRANCH BANKING AND TRUST COMPANY, a North Carolina banking corporation, having a branch office in Anderson, South Carolina ("Assignee").

Assignor is the sole owner of that certain real property located in the City of Clemson, County of Oconee, State of South Carolina described in Exhibit "A" attached hereto and by this reference incorporated herein (the "Property") subject to that certain Mortgage dated as of even date herewith, conveyed by Assignor to Assignee and recorded concurrently herewith in the Office of the Register of Deeds Conveyances in Oconee, County, South Carolina (the "Mortgage"), as the same may be modified, or supplemented, from time to time.

For good and valuable consideration, Assignor hereby absolutely assigns and transfers to Assignee: (a) the income, rents, (including, if applicable, all hotel roomiers), receivables, security or similar deposits, revenues, issues, royalties, profits, earnings, products and proceeds from any and all of the Property (collectively, the "Rents, Issues and Profits") together with the right, power and authority to collect the same; (b) all leases, written or oral, now in existence or hereafter arising, all other agreements for the use and occupancy of all or any portion of the Property, and any and all extensions or renewals of any lease, and all other leases and collectively, the "Leases", together with the right, power and authority of Assignor to enter, modify, amend, renew, extend, terminate, cancel or surrender the same, and (c) any and all guarantees of any obligations of any lessee and "lessee" under each of the leases. Assignor irrevocably appoints Assignee to sue and defend in its own name, at any time and from time to time, at the option of Assignee, to demand, receive and enforce payment of all of the Rents, Issues and Profits, and to sue, in the name of Assignor or Assignee, at the time and from time to time, to enforce the Leases and satisfactions, and to sue, in the name of Assignor or Assignee, at the time and from time to time, to enforce the Leases and satisfactions, provided, however, that Assignor shall have the right to sue and defend in its own name, at any time and from time to time, to demand and secure the Rents, Issues and Profits, and to enforce the Leases and satisfactions, provided, however, that no default hereunder or under any other loan document evidenced herein or any of the other loan documents evidencing and securing the Mortgage shall constitute a default under the Leases and satisfactions in this Assignment is an absolute assignment from Assignor to Assignee and not merely the passing of a security interest.

This Assignment is made for the following purposes:

A. Payment of the principal and interest on the indebtedness evidenced by those certain promissory notes each dated of even date herewith and hereinafter amended, extended, renewed, or substituted, collectively the "Notes", in the principal amount of (i) Six Million One Hundred Ninety Thousand Four Hundred Seventy Five Dollars (\$6,194,775) made by Pointe West, LLC ("Pointe West"), (ii) Three Million One Hundred Forty Five Thousand Dollars (\$3,145,000) made by Pointe West, LLC ("High Pointe"), (iii) Six Million Five Hundred Thousand Dollars (\$6,500,000) made by Pointe West, LLC ("Seven Million Six Hundred Thousand Dollars (\$7,600,000) made by High Pointe; and (iv) One Million Four Hundred Thirty Four Thousand Dollars (\$1,434,000) made by Assignor Assignor, and together with Pointe West, LLC and High Pointe, LLC, and collectively, the "Borrowers").

B. All indebtedness and obligations of the Borrower to Assignee (or an affiliate of Assignee) under any interest rate swap agreement, interest rate cap transaction, interest rate collar transaction, swap agreements (as defined in the ISDA Master Agreement), interest rate swap transactions or agreements, including without limitation any ISDA Agreement executed by Assignor or any Borrower and all Schedules and Confirmations entered into in connection therewith, the terms of which are hereby incorporated by reference, the terms of which are incorporated herein by reference.

C. The payment, performance, satisfaction and every obligation, covenant and agreement of Assignor or any Borrower under the Notes and all other obligations of Assignor or any Borrower to Bank, including without limitation the obligation of Assignor or any Borrower to Bank, including without limitation any Standby or Commercial Letter of Credit issued by Bank to the Borrower or any other party, and all applications, and all Applications and Agreements therefor ("Application"), and all costs of the Bank, including without limitation the attorney's fees as provided in the Note, any Hedge Agreement, Application, or otherwise.

The indebtedness and obligations of the Borrowers to Assignee and Bank are hereinafter collectively referred to herein as the "Indebtedness".

ASSIGNOR'S REPRESENTATIVE is hereby acknowledged as the sole owner of its entire interest, as Lessor, in the Leases; that the terms and conditions of the Leases have not been altered, modified or amended in any manner whatsoever except as may be necessary to carry out the intent of the Leases; that no lessee named therein is in default under any of the terms, covenants or conditions of the Leases; that no lessee named therein has been assigned or anticipated, that no rent for any period subsequent to the date of this Assignment has been collected more than one month in advance of the

STATE OF SOUTH CAROLINA }
COUNTY OF Perdue }

ACKNOWLEDGMENT

I, Christy Taylor, a notary public in SOUTH CAROLINA, do hereby certify that JAMES DONALD WOODMAN the Manager of Harts Cove Development, LLC, a South Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal (where an official seal is required) by law) official seal this 16th day of January, 2009.

 (S.C.)
Signature of Notary Public
My Commission Expires 12-19-2012

EXHIBIT A

(Here set forth the entire legal description of the Property covered by the Mortgage granted by Assignor to Assignee.)

All that certain piece, parcel or Condominium Unit(s) lying and being situate in the State of South Carolina, County of Oconee being known and designated as Units 222, 1111, 1121, 1131, 1132, 1133, 1202, 1221, 1222, 1311, 1331, 1402, 1411 and 1413 of the Harts Cove Horizontal Property Regime, being more particularly described by reference to the "Master Deed of Harts Cove Horizontal Property Regime" establishing the aforementioned REGIME, dated August 7, 2003, and recorded in the Office of the Register of Deeds for Oconee County, South Carolina in Deed Book 1294 at Page 4 and as may be amended from time to time.

ALSO, all the rights, privileges and common elements appertaining to the above described Units, as set forth in the above-described Master Deed and By-Laws of Harts Cove, a Horizontal Property Regime, together with all the rights and privileges as shown on instrument filed of record in Book 1347, at Page 338.

This being a portion of the same property conveyed unto Harts Cove Development, LLC by deed from University Park, a Partnership dated August 4, 2004 and recorded in Deed Book 1262, page 45, records of Oconee County, South Carolina.

FILED FOR RECORD
CONYEA COUNTY, GA
REGISTER OF DEEDS
2009 JAN - 7 PM 3:19

Prepared by and return to:
Alan M. Lipsitz, Esquire
Lexsen Pruet, LLC
230 Main Street, Suite 700
Columbia, South Carolina 29201

JAN -7 P 3 18



Doc ID: 00157822005 Type: MFD
BK 2693 PG 118-122

ASSIGNMENT OF LEASES AND RENTS

STATE OF SOUTH CAROLINA
COUNTY OF DOONEE

1100
00000
PO BOX 1633
Anderson, SC
003152

THIS ASSIGNMENT OF LEASES AND RENTS ("Assignment") is made this 6th day of January, 2008, by and from JACABS UTILITIES, LLC, a South Carolina limited liability company ("Assignor"), to and for BRANCH BANKING AND TRUST COMPANY, a North Carolina banking corporation, having a branch office in Anderson, South Carolina ("Assignee").

Assignor is the sole owner of that certain real property located in the City of Clemson, County of Doonee, State of South Carolina described in Exhibit "A" attached hereto and by this reference incorporated herein (the "Property") subject to that certain Mortgage dated as of even date herewith, conveyed by Assignor to Assignee and recorded concurrently herewith in the Office of the Registrar of Deeds Commissions in Doonee County, South Carolina (the "Mortgage", as the same may be modified, or supplemented from time to time).

For good and valuable consideration, Assignor hereby absolutely assigns and transfers to Assignee: (a) the rents, if any (rent), turnover and of all the Property (collectively, the "rents") together with the right, power and authority to collect the same; (b) all leases, whether in writing or otherwise, now in existence or hereafter arising, all other agreements for the use and occupancy of all or any portion of the Property, and all amendments, extensions or renewals of any thereof, (individually "Lease" and collectively, the "Leases"); together with the right, power and authority of Assignor to alter, modify or change the terms thereof, or subdivide, re-entire or terminate the same; and all guarantees of any obligations of any lessee (the "Lessee") under each of the Leases. Assignor hereby irrevocably appoints Assignee its true and lawful attorney-in-fact, at any time and from time to time, at the option of Assignee, to demand, receive and enforce payment of rent, and to sue, in the name of Assignor or Assignee, for all the rents, if any and to apply the same to the indebtedness secured; provided, however, that Assignor shall have the right and power to fact the rents, prior to or at any time there is no default hereunder or under any Hedge Agreement as defined hereinafter, if any of the other loan documents evidencing and securing the Note ("Loan Documents"). The assignment of all the rents in this Assignment is an absolute assignment from Assignor to Assignee and shall only be applicable if Assignee leases the property to a third party or entity.

This Assignment is made for the purpose of ensuring:

A. Payment of the principal of any, interest and indebtedness evidenced by those certain promissory notes each dated of even date herewith and by this reference incorporated herein, any amendments, extensions, renewals, or substitutions thereof, collectively the "Notes", in the amount of (i) Six Million One Hundred Ninety Thousand Four Hundred Seventy Five Dollars (\$6,194,750.00) made by High Pointe, LLC ("High Pointe"); (ii) Three Million One Hundred Forty Five Thousand One Hundred Sixty Dollars (\$3,145,160.00) made by Harts Cove Development, LLC ("Harts Cove"); and (iii) Seven Million Six Hundred Thousand Dollars (\$7,600,000) made by High Pointe; and (iv) One Million Four Hundred Thousand Dollars (\$1,400,000) made by Harts Cove Development, LLC ("Harts Cove"), and for the Leases West and High Pointe, individually, "Borrowers" and collectively, the "Borrowers".

B. All interdealer and interbank derivatives and other transactions entered into by Assignor or an affiliate of Assignee under any interest rate swap transactions entered into pursuant to ISDA protocols, interest rate collar transactions, swap agreements (as defined in 11 U.S.C. § 101) or other similar transactions or agreements, including without limitation any ISDA Agreement executed by any Borrower and all schedules and confirmations entered into in connection therewith, hereinafter collectively referred to as "Derivatives", which are incorporated herein by reference.

C. The payment of the principal of any, interest and every obligation, covenant and agreement of Assignor or any Borrower under any loan documents, including without limitation any other obligation of any Borrower to Bank, including without limitation any Standby or Commercial Letter of Credit issued by Assignee or the receipt of any application for such Standby or Commercial Letter of Credit Agreement therefor ("Application"), and all costs of collection including reasonable attorney's fees and disbursements, any Hedge Agreement, Application or other Loan Documents.

The indebtedness and obligations described in A, B, and C above are hereinafter collectively referred to herein as the "Indebtedness".

ASSIGNOR WARRANTS that as of this date there are no leases in existence.

ASSIGNOR AGREES AND WARRANTS that Assignor shall observe and perform all obligations imposed under the Leases, to the extent of the Leases, together with all obligations imposed under any Leases received or given by Assignor together with a duty to pay the same, and to pay the same, together with all costs and expense of Assignor, to enforce, short of termination of any Lease, the terms, conditions, covenants and every covenant and condition thereof by all parties thereto; and not to do anything which would constitute a breach of any Lease or assignment of rents arising or accruing from the Leases or any Lease, or which would constitute a lien, charge, mortgage, pledge, security interest, or other encumbrance or permit, consent or agree to

Documents and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Assignee under the terms of the Loan Documents. The right of Assignee to collect the Indebtedness and to enforce any other security interest held by it may be exercised by it, by or on behalf of Assignee, at any time prior to, simultaneously with, or subsequent to any action taken by it hereunder.

7. Assignor hereby assigns to Assignee any portion of an award payable by reason of condemnation action under the right of eminent domain, and should the award be paid, the award shall be paid directly to Assignee.

8. Any guaranty of payment and performance of any lease shall not be released, modified, or limited in any manner without the prior written consent of Assignee.

9. This Assignment is made, executed and delivered in the State of South Carolina and shall be governed by the laws of the State of South Carolina. Each provision of this Assignment shall be interpreted in such a manner as to be effective and valid under the applicable law, but if any provision hereof shall be prohibited by or invalid under the applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Assignment.

10. In case of any conflict between the provisions of this Assignment and the terms of the Mortgage, the terms of this Assignment shall control.

WAVE OF TRIAL BY JURY. UNLESS EXPRESSLY PROHIBITED BY APPLICABLE LAW, THE UNDERSIGNED HEREBY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY MATTERS OR CLAIMS ARISING OUT OF THIS ASSIGNMENT OR ANY LOAN DOCUMENTS RELATED IN CONNECTION HERewith OR OUT OF THE CONDUCT OF THE RELATIONSHIP BETWEEN THE UNDERSIGNED AND ASSIGNEE. THIS PROVISION IS A MATERIAL INDEPENDENT CONTRACT TERM OF ALL THE LOAN SECURED BY THIS ASSIGNMENT. FURTHER THE UNDERSIGNED HEREBY CERTIFY THAT NO REPRESENTATIVE OR AGENT OF ASSIGNEE, NOR ASSIGNEE'S COUNSEL, HAS REPRESENTED, PROMISED OR OTHERWISE, THAT ASSIGNEE WOULD NOT SEEK TO ENFORCE THIS WAIVER OF TRIAL BY JURY PROVISION IN THE EVENT OF LITIGATION. NO REPRESENTATIVE OR AGENT OF ASSIGNEE, NOR ASSIGNEE'S COUNSEL, HAS THE AUTHORITY TO WAIVE, CONDITION OR MODIFY THIS PROVISION.

Assignor is not a Borrower or Guarantor of the loan of the licensed operator of a wastewater treatment facility located at the Premises being sold hereunder pursuant to the Sewer Agreement. In the event of default by the Borrower or Guarantors, Assignee's rights are subject to the terms of the Sewer Agreement. This Assignment will only be effective if Assignor leases the Premises.

THIS ASSIGNMENT, together with the other documents and instruments herein contained, shall inure to the benefit of Assignee and any subsequent holder of the Indebtedness. This Assignment shall be binding upon Assignor, its successors and assigns and any other person claiming through Assignor.

IN WITNESS WHEREOF, Assignor has hereunto set forth its hand, printed name and seal, or caused this Assignment to be executed and sealed, and the undersigned, a duly authorized officer or member(s) of the day first above shown.

IN CARBONITIVES, LLC

Witness:




STATE OF SOUTH CAROLINA

ACKNOWLEDGEMENT

COUNTY OF Perkins

JAMES S. SALES

~~James S. Sales~~ a notary public for County of Perkins, do hereby certify that Stephen R. Lewis the Member of Health Utilities, LLC, a South Carolina General Liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal (where an official seal is required by law) official seal this 6th day of January, 2009.

James S. Sales (SEAL)

Signature of Notary Public
My Commission Expires Jan 24, 2016

EXHIBIT A

(Here set forth the entire legal description of the Property covered by the Mortgage granted by Assignor to Assignee.)

All that certain piece, parcel or tract of land lying and being situate in the State of South Carolina, County of Oconee, being known and designated as 7.561 acres, more or less, Seneca Township, Oconee County, South Carolina, and being more fully described on a plat entitled "Boundary Survey for Jacobb Utilities" prepared by Stephen R. Edwards, PLS# 19881 dated October 11, 2007, and revised October 18, 2007, recorded in the RMC Office for Oconee County, South Carolina in Plat Book B241, page 4, and having the metes and bounds, courses and distances as upon said plat appear. Also shown AS 7.56 "Outside" parcel on plat thereof entitled, "Survey for Pointe West, Inc.", dated 5/27/08, revised 8/13/08, revised 9/3/08, revised 1/5/09, and recorded in the Office of the Register of Deeds for Oconee in Plat Book ~~B241~~ at Page 2-3, and having the metes and bounds, courses and distances as upon said plat appear.

Together with a non-exclusive easement and right of way 20' wide for ingress and egress, paramount to instrument filed in Book 1621 at Page 267, together with rights paramount to instrument filed in Book 1621 at Page 27.

This being the same property conveyed into Jacobb Utilities, LLC by deed from Pointe West, Inc. dated 12/1/07 and recorded in Deed Book 1634, page 267, records of Oconee County, South Carolina.

FILED FOR RECORD
OCCONEE COUNTY, S.C.
REGISTER OF DEEDS
2009 JUN - 1 PM 3:10

other obligors under the Notes. Any foreclosure by the Mortgagee in exercising any right or remedy hereunder or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other taxes or charges by Mortgagee shall not be a waiver of Mortgagee's right to accelerate maturity of the indebtedness evidenced by the Notes assumed hereby. Failure of the mortgagor to make the payment or performance of any of the obligations, or any covenant or warranty contained in this mortgage, or in any of the Notes or any other document related thereto.

12. That upon default hereunder, along with all other remedies set out herein and in the above referenced Notes, the Mortgagee may foreclose upon the mortgaged premises and ask for a deficiency judgment pursuant to §29-3-660 of the South Carolina Code of Laws (1976). Mortgagee hereby expressly waives and releases all its appraisal rights which Mortgagor may have under §29-3-680 et seq., South Carolina Code of Laws (1976), as amended. Mortgagee understands and agrees that a deficiency judgment, if pursued by Mortgagee, shall be determined by the highest priced bid at the judicial sale of the Property. In the event that Mortgagee voluntarily or otherwise shall become parties to any suit or legal proceeding involving the Property, it shall be saved harmless and shall be reimbursed by Mortgagor for any amounts paid, including all expenses and attorney's fees incurred in any such suit or proceeding, and the same shall be secured by this Mortgage and payment thereunder.

13. That the covenants herein contained shall bind and the benefits and advantages shall inure to, the respective heirs, executors, administrators, successors, and assigns of the parties herein. Whenever used, the singular number shall be applicable to all genders and the word "heirs" shall include all persons who may be entitled to the Property hereby secured or any transferee thereof whether by operation of law or otherwise. The parties herein may be one or more persons, individuals, or more than one, be joint and several. The designations "corporation," "partnership," "trust," "sole proprietorship," "joint tenancy," "tenancy in common," "limited liability partnership,"

14. **WARRANTY OF TITLE. NOTWITHSTANDING ANY WAIVER OR RELEASE PROHIBITED BY APPLICABLE LAW, THE UNDERSIGNED HEREBY WARRANTS TO MORTGAGEE THAT THE PROPERTY IS FREE FROM ANY MATTERS OR CLAIMS ARISING OUT OF THIS MORTGAGOR OR ANY TRANSFEROR OF THE PROPERTY IN CONNECTION HEREWITH OR OUT OF THE CONDUCT OF THE DEED GIVING RISE TO THIS MORTGAGE AND MORTGAGRE. THIS PROVISION IS A MATERIAL ESSENTIAL POINT OF INTEREST TO MORTGAGEE UNSECURED BY THIS MORTGAGE. FURTHER, THE UNDERSIGNED HEREBY WARRANTS THAT THE UNDERSIGNED OR AGENT OF MORTGAGOR, NOR MORTGAGOR'S COUNSEL, HAS REPRESENTED OR ADVISED OR OTHERWISE, THAT MORTGAGOR WOULD NOT SEEK TO ENFORCE THIS WARRANTY OR ANY OTHER PROVISION IN THE EVENT OF LITIGATION. NO REPRESENTATIVE OR AGENT OF MORTGAGOR OR MORTGAGOR'S COUNSEL, HAS THE AUTHORITY TO WAIVE, CONDITION OR MODIFY THIS WARRANTY.**

Waiver of Appraisal Rights. The Laws of North Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as appraised by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. TO THE FULLEST EXTENT PERMITTED BY LAW AND AS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN, MORTGAGOR HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.

IN WITNESS WHEREOF, said Mortgagor has executed this Mortgage the day and year first above written.

Signed, sealed and delivered in the presence of:

Signed, sealed and delivered in the presence of:

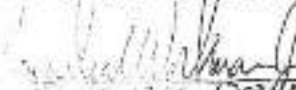


(SEAL)


(SEAL)

MORTGAGOR:

REDEVELOPMENT, LLC



(SEAL)
WOLLMAN

STATE OF SOUTH CAROLINA

ACKNOWLEDGMENT

COUNTY OF PICKENS

Christopher L. Oke a notary public for South Carolina do hereby certify that James Lee Wood ^{husband} Manager of Delta Ave Development, LLC, a South Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal (where an official seal is required) or my official seal this 6th day of January, 2009.

Christopher L. Oke (SEAL)

Signature of Notary Public:
My Commission Expires 12-19-2012

EXHIBIT A

All that certain piece, parcel or Condominium Unit(s) lying and being situate in the State of South Carolina, County of Oconee being known and designated as Units 222, 1111, 1121, 1131, 1132, 1133, 1202, 1221, 1222, 1311, 1331, 1402, 1411 and 1413 of the Harts Cove Horizontal Property Regime, being more particularly described by reference to the "Master Deed of Harts Cove Horizontal Property Regime" establishing the aforementioned REGIME, dated August 7, 2003, and recorded in the Office of the Register of Deeds for Oconee County, South Carolina in Deed Book 1294 at Page 4 and as may be amended from time to time.

ALSO, all the rights, privileges and common elements appertaining to the above described Units, as set forth in the above-described Master Deed and By-Laws of Harts Cove, a Horizontal Property Regime, together with all the rights and privileges as shown on instrument filed of record in Book 1347, at Page 338.

This being a portion of the same property conveyed unto Harts Cove Development, LLC by deed from University Park, a Partnership dated August 4, 2004 and recorded in Deed Book 1362, page 45, records of Oconee County, South Carolina.

FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS
2009 JAN - 7 P 3 19